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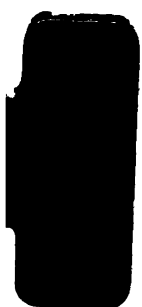
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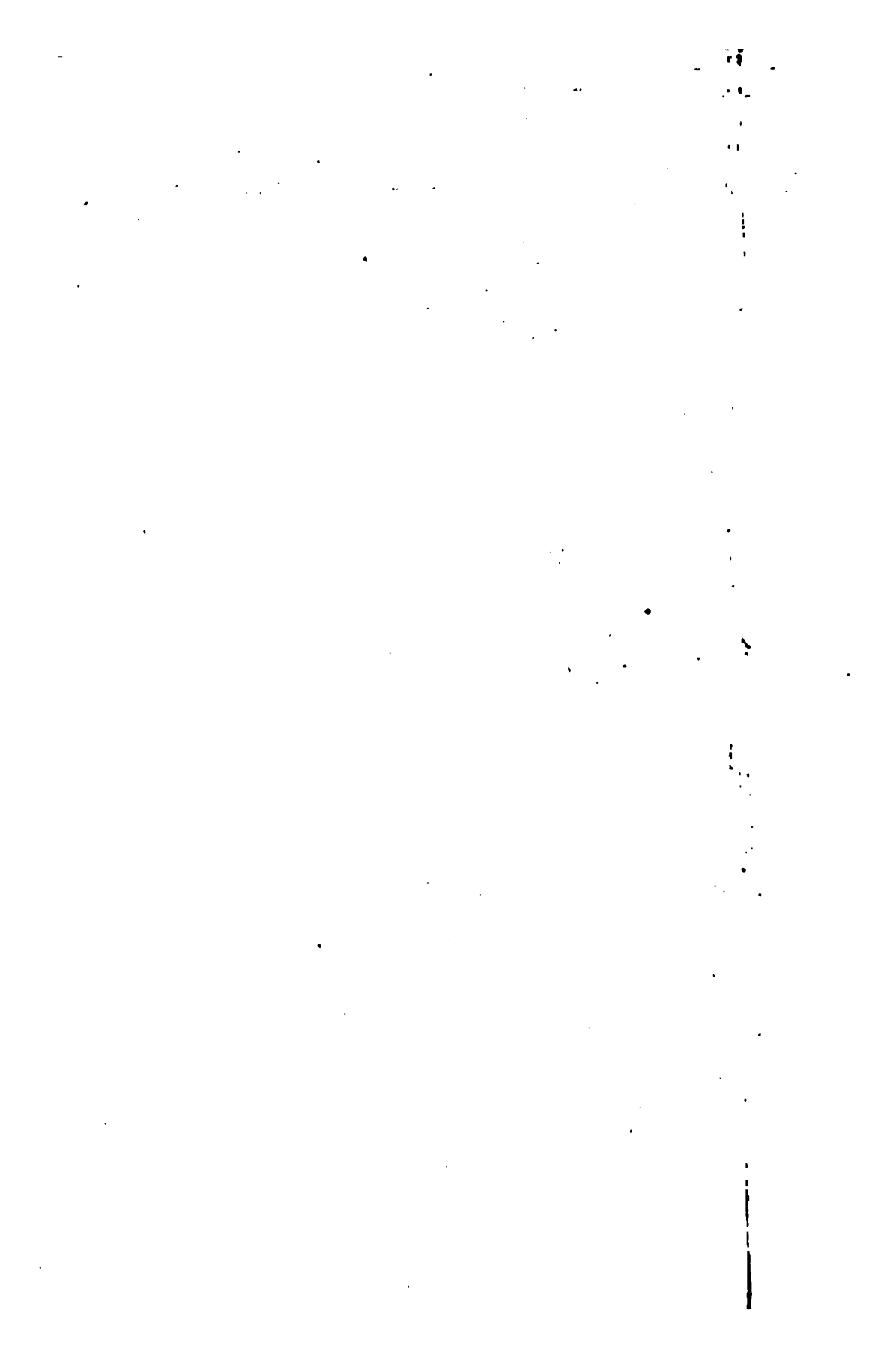
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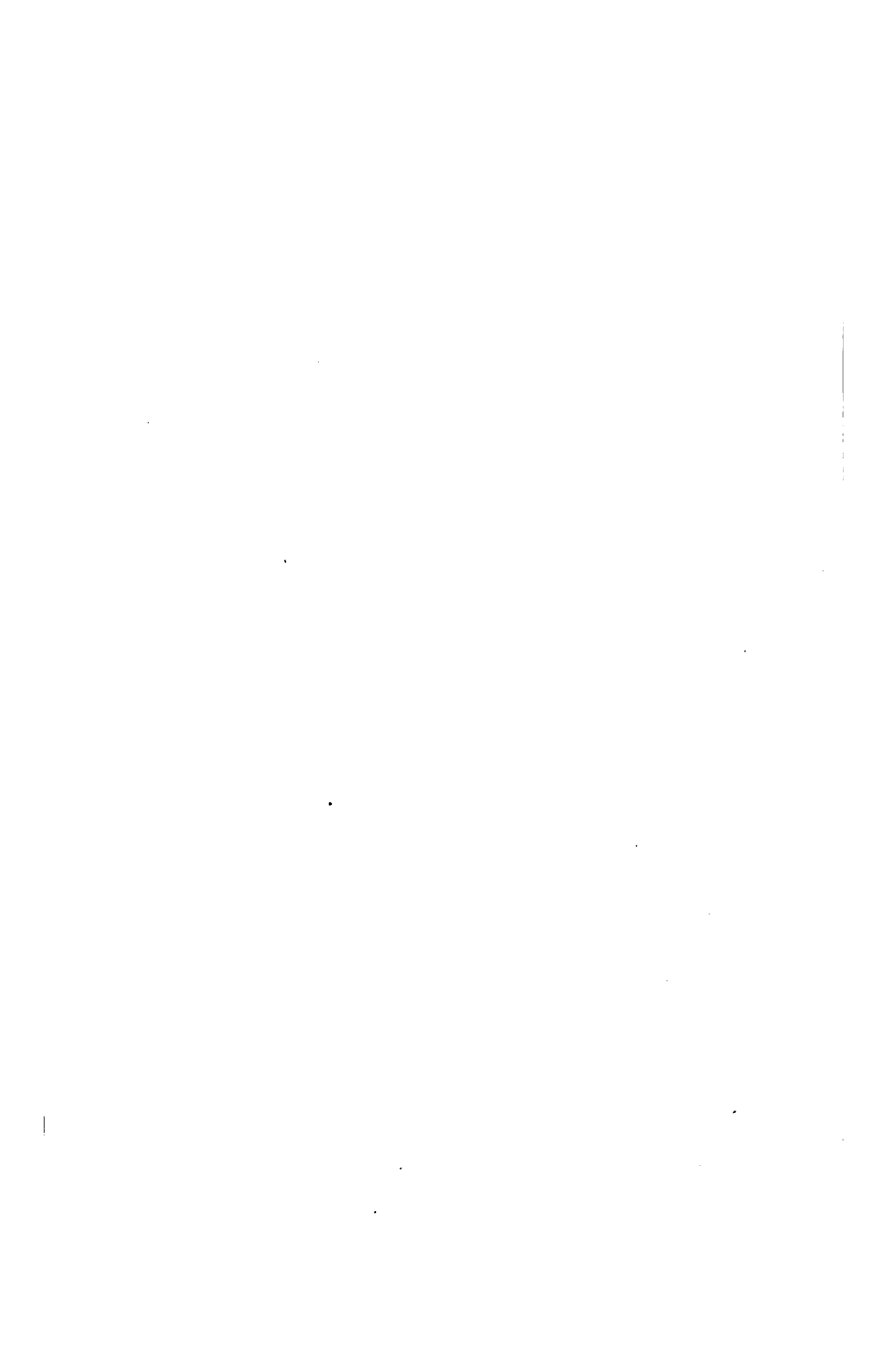


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New York State Statutes.

BENDER'S VILLAGE LAWS

OF THE
STATE OF NEW YORK

CONTAINING THE

*New Consolidated Village Law, General Municipal Law, Public Officers Law,
General Construction Law, and Miscellaneous Provisions of the
Transportation Corporations Law, Town Law, County Law,
Public Health Law, Election Law, Poor Law, Edu-
cation Law, Conservation Law, Highway
Law, Tax Law, Penal Law, etc.,
relating to Villages.*

TOGETHER WITH ANNOTATIONS, FORMS AND INSTRUCTIONS

By
ROBERT GRATTAN
of the New York Bar

SIXTH EDITION

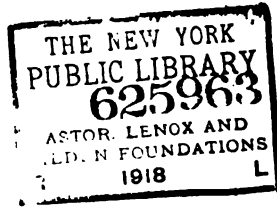
By
AUSTIN B. GRIFFIN
of the Albany Bar



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PREFACE TO SIXTH EDITION

The amendment by the Legislature of 1918 of nearly fifty sections of the statutes contained in this volume, the recent cases construing the Village Law, and the sale of all of the last edition, have necessitated a new edition.

Albany, N. Y., June 11, 1918.

AUSTIN B. GRIFFIN.



PREFACE

The body of Village Law, herein contained, was enacted by the Legislature in 1897. By this enactment all prior general laws, relating directly to villages, were repealed. A complete chapter was evolved in which the entire law on the subject was embodied. Since that date there have been many changes. Entire articles have been added and the several sections have been revised and amended in many important particulars. It is the purpose of this work to set forth the Village Law as it now exists and as it is now being applied by the courts throughout the state. The derivation of the several sections has in each case been indicated, showing a complete history of the statute from its original passage. Following each section there have been included Reviser's, Consolidator's and Editor's notes where they are useful in pointing out material changes in the law. A system of cross references, it is believed, will substantially aid in the construction of the several chapters and sections, as well as serve to point out provisions of the general law which affect municipalities.

Under each section has been grouped the decisions of the courts pertaining thereto, or in which such section has received judicial construction. Decisions under prior laws have been included, where pertinent, as well as decisions affecting municipalities in general.

Part II contains provisions of the General Law applicable to municipal corporations in general and villages in particular.

Part III contains a list of forms intended for the use of village officials and the legal profession.

ITHACA, N. Y., *August 10, 1910.*

ROBERT GRATTAN.

REVISERS' NOTE.

The following is a portion of the revisers' note to The Village Law of 1897:

The Constitution of 1846 required the Legislature "to provide for the organization of cities and incorporated villages." Accordingly a general act for the incorporation of villages was passed in the following year (Laws 1847, chap. 426). The Constitution of 1846, however, did not require villages to be incorporated under general law, and the Legislature continued to pass special charters. The general Village Law was revised and re-enacted in 1870 (Laws 1870, chap. 291), and the act of 1847 was repealed except as to villages incorporated under it; but the constitutional provision prohibiting the incorporation of villages by special law was not adopted until November 3, 1874, taking effect January 1, 1875. Since January 1, 1875, all villages have been incorporated pursuant to the general law.

There are thus three classes of organized villages in this State: First, those incorporated under special laws prior to the amendments of the Constitution, and which have not reincorporated under a general law; second, those incorporated under and subject to the general Village Law of 1847; and third, those incorporated under and subject to the general Village Law of 1870.

During the last quarter of a century there has been a marked municipal development in this State, and we now have thirty-seven cities containing more than 65 per cent. of the population. But this development has not been confined to cities; villages have grown and multiplied, until we have about 400 of these smaller municipalities, with a population of more than half a million. Many of the questions relating to municipal administration apply with equal significance to incorporated villages. Taxation, police and sanitary regulations, street railroads, the supply of water and light, street improvement, education and economical administration, are subjects in which villages as well as cities have an abiding interest, differing mainly in degree. Some villages are larger than some cities, and many present conditions demand attention and consideration equal in kind and

For general note of consolidators (1909), see note to The Village Law, § 1.

degree to those required by the smaller cities. The form of government differs, but the ends to be attained are substantially the same, and the same principles of administration must be applied to both classes of municipalities. This situation has been recognized by the Legislature, and efforts have been made to provide for the expansion of village government in many directions not contemplated by the original act of 1870. One result is that village legislation is fragmentary and sometimes incongruous. Many changes have been engrafted on the original law, and many important provisions appear in independent statutes, some of which affect all villages, and some only those incorporated under the general law.

If a village law could be enacted broad enough to include all villages, superseding and repealing all special as well as general laws, it would do much to simplify the problems of village government. We have not, however, attempted to go so far. The Village Law which we propose is a revision of all the general village laws of the State. The general acts of 1847 and 1870, and all acts amendatory thereof or supplemental thereto are repealed. In addition to the general laws repealed, the proposed law supersedes and repeals a large number of special laws relating to particular villages incorporated under and subject to a general law. Every village now subject to either the general law of 1847 or 1870 is made subject to its provisions as if incorporated thereunder. A special village is made subject to such of its provisions as do not conflict with its charter. A special village is authorized either to continue under its charter in connection with proposed general law, or to abandon its charter and adopt the provisions of the new law by reincorporation thereunder. It has been our endeavor throughout to make the provisions of the proposed law so elastic as to permit variations according to local customs and conditions so that by reincorporation all or nearly all villages of the State will eventually have one uniform system of government. The home rule features of the proposed law, we believe, will encourage this result. We have given to the officers and peoples of a village subject to its provisions broad power in determining what rights and privileges the village shall exercise and enjoy, so that a village with few wants and necessities, as well as one requiring a more comprehensive and complete form of government, can operate

under it. But even if special villages do not reincorporate under its provisions, we think that the new law will tend to obviate the necessity of a large amount of legislation relating to special villages, for the reason that the provisions of the general law, when not in conflict with their special charters, are made applicable to them.

The proposed new law is based upon the general act of 1870, the acts amendatory thereof, and the other general and supplementary legislation relating to villages. In many respects the act of 1870, under which a majority of the villages of the State are now operating, is unsatisfactory and incomplete. This has necessitated many changes of substance in the revision. Conflicting provisions have been reconciled, and obsolete, impracticable, and unconstitutional provisions have been omitted. Many new provisions are proposed to meet varying local conditions. A note is added to each section, which indicates the source of the section, the provisions of the old law for which it is substituted, or that a section is new.

References are made to laws as printed in the ninth edition of the Revised Statutes, which contains the laws as amended to January 1, 1896. No reference is, therefore, made to amendatory laws, unless the same were passed since that date. The table following the chapter indicates the disposition of each law specifically repealed by the revision.

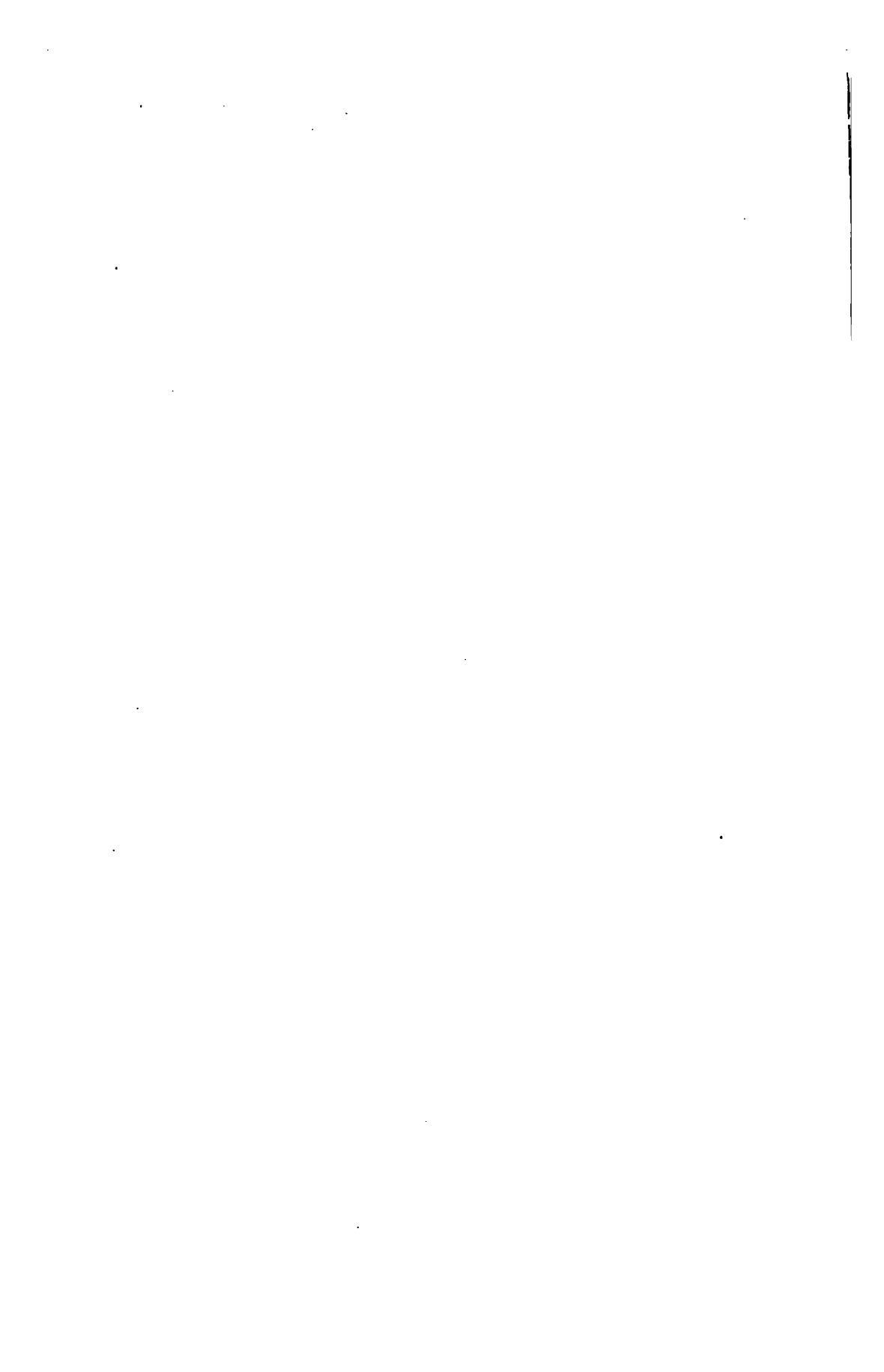


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PART I.

VILLAGE LAW

OF THE

STATE OF NEW YORK.

Laws 1909, Chapter 64, with all amendments passed at Legislative session of 1912.

AN ACT relating to villages, constituting chapter sixty-four of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER 64 OF THE CONSOLIDATED LAWS

VILLAGE LAW

- Article**
1. Short title (§ 1).
 2. Incorporation (§§ 2-33).
 3. Officers and elections (§§ 40-68).
 4. Powers, duties and compensation of officers (§§ 80-95).
 5. Finances (§§ 100-133).
 6. Streets, sidewalks and public grounds (§§ 140-174).
 7. Police department (§§ 180-190).
 8. Fire department (§§ 200-210).
 9. Water (§§ 220-235).
 10. Light (§§ 240-247).
 11. Sewers (§§ 260-278).
 - 11a. Board of Public Works (§§ 278-283).
 12. Cemeteries (§§ 290-297).
 13. Reincorporation (§§ 300-305).
 14. Provisions applicable to certain villages (§§ 310-321).
 15. Miscellaneous provisions (§§ 330-358).
 16. Effect of chapter (§§ 380, 381).
 17. Laws repealed; when to take effect (§§ 390, 391).

ARTICLE I.

SHORT TITLE.

Section 1. Short title.

§ 1. Short title.

This chapter shall be known as the "Village Law."

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 1.

Consolidators' general note. The Village Law is the result of an examination of all the general statutes relating to the incorporation, government and finances of villages, beginning with L. 1847, Ch. 151, entitled "An act in relation to fire-men in incorporated villages," the act in relation to cemeteries in such villages (Ch. 209), and the general incorporation act of the year (L. 1847, Ch. 426), and including the legislation of the year 1907.

History and effect of chapter. The Constitution of 1846 required the legislature "to provide for the organization of cities and incorporated villages." Accordingly a general act for the incorporation of villages was passed in the following year (L. 1847, Ch. 426). The Constitution of 1846, however, did not require villages to be incorporated under general law, and the legislature continued to pass special charters. The general Village Law was revised and re-enacted in 1870 (L. 1870, Ch. 291) and the act of 1847 was repealed except as to villages incorporated under it: but the constitutional provision prohibiting the incorporation of villages by special law was not adopted until Nov. 3, 1874, taking effect Jan. 1, 1875. Since Jan. 1, 1875, all villages have been incorporated pursuant to the general law.

There are thus three classes of organized villages in this state: First, those incorporated under special laws prior to the amendments of the Constitution, and which have not reincorporated under a general law; second, those incorporated under and subject to the general Village Law of 1847; and third, those incorporated under and subject to the general Village Law of 1870.

The Village Law which we propose is a revision of all the general village laws of the state. The general acts of 1847 and 1870, and all acts amendatory thereof or supplemental thereto are repealed. In addition to the general laws repealed, the proposed law supersedes and repeals a large number of special acts relating to particular villages incorporated under and subject to a general law. Every village now subject to either the general law of 1847 or 1870, is made subject to its provisions as if incorporated thereunder. A special village is made subject to such of its provisions as do not conflict with its charter. A special village is authorized either to continue under its charter in connection with the proposed general law, or to abandon its charter and adopt the provisions of the new law by reincorporation thereunder. Rep. of Commrs. Stat. Rev. 1897, p. 85.

The scheme of the Village Law is to provide a uniform law for the government of Villages, and the election and appointment of their officers. *People v. Scott*, 31 Misc. 131 (1900).

Object of Village Incorporation Act is to provide a simple method of incorporating villages, with an equally simple method of testing the legality of the proceedings and a prompt remedy for any mistake rendering those

proceedings invalid. *People v. Snedeker*, 160 N. Y. 350 (1899), aff'g 30 App. Div. 1.

In Construing Village Charter all of its provisions must be considered and harmonized when possible. *Port Gervis, etc. Co. v. Village of Port Gervis*, 151 N. Y. 111 (1896).

A municipal corporation is the creature of the statute, and the adjustment of its powers and duties and the relative right of the citizens and the municipality is the province of the legislature. *Scott v. Village of Saratoga Springs*, 115 N. Y. Supp. 796 (1909).

ARTICLE II.

INCORPORATION.

- Section 2. Requisite population.
3. Proposition for incorporation and consent of property owners.
4. Notice of hearing.
5. Proceeding on hearing.
6. Decision of supervisor.
7. Notice of appeal from decision of supervisor.
8. Hearing and decision of appeal.
9. When election may be held.
10. Notice of election.
11. Conduct of election.
12. Qualifications of electors.
13. Ballot boxes where territory is in more than one town.
14. Canvass of election.
15. Appeal from election.
16. Notice of appeal and return.
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18. Appeal to appellate division.
19. Stay on appeal.
20. New election.
21. When village deemed incorporated.
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23. Compensation for services under this article.
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26. First election of officers, when held.
27. Appointment of village clerk; inspectors of election.
28. Notice of election of officers.
29. Officers to be elected; terms of office.
30. Conduct of election.
31. First meeting of board of trustees.
32. Temporary loan for expenses.
33. Incorporation where population is fifty or more and less than two hundred.

§ 2. Requisite population.

A territory not exceeding one square mile, or conforming to the boundaries of a water district, lighting, fire or school district, or an entire town, or two school districts, containing in each case a population not less than two hundred, and not including a part of a city or village, may be incorporated as a village under this chapter.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 2, as amended by L. 1899, Ch. 154. Amended by L. 1909, Ch. 555; L. 1915, Ch. 31 and L. 1917, Ch. 65. In effect March 16, 1917.

The amendment of 1899, Ch. 154 reduced the minimum population from 300 to 200.

Revisers' note (1897). Article I of this chapter is a substitute for title I of the general law of 1870, and furnishes a new method of procedure for the incorporation of villages. Reference to the source of each section is, therefore, impracticable. No change is made in the size and population of a territory which is authorized to incorporate. The provisions of section 1 of the act of 1870, however, authorizing the incorporation of a territory of less than one square mile, containing a park of forty acres, etc., are omitted. These provisions, though general in terms, are local in application, and have, doubtless, served the purpose for which they were originally enacted. Under the present law, after the census and survey have been taken, an election to determine the question of incorporation is authorized. An appeal may then be taken from the election, and upon the appeal all questions involving the legality of the incorporation, including questions as to the territory, the requisite population, or the irregularity of the election, may be raised. Thus the election may result favorably to incorporation, and upon the appeal it may appear that the population is insufficient, or that the territory is too large. Under the proposed revision all questions as to the territory, the requisite population, or the qualifications of the persons proposing incorporation, are determined finally before an election is authorized to be held, and upon the appeal from the election only questions involving the regularity thereof can be raised.

Minimum of population must exist. Proceedings, no matter how scrupulously conducted, cannot create a village out of a less than statutory number of inhabitants. *Gardner v. Christian*, 70 Hun, 550 (1893); 24 N. Y. Supp. 339; 53 N. Y. St. Repr. 732.

Under the act of 1870 where the territory to be included exceeds one square mile in extent, the additional territory to be included must have at least three hundred persons residing therein. In *Matter of Village of Elba*, 30 Hun, 548 (1883).

§.3. Proposition for incorporation and consent of property owners.

Twenty-five adult freeholders residing in such territory may institute a proceeding for the incorporation thereof as a village, by making and delivering to the supervisor of the town in which such territory is situated, or if situated in two or more towns, to the supervisors of each of such towns, a proposition in substantially the following form:

PROPOSITION

FOR THE

Incorporation of the village of

The undersigned adult resident freeholders of the territory hereinafter described propose the incorporation thereof by the name of the village of

The territory proposed to be incorporated does not exceed one square mile and is bounded and described as follows: (or, the territory proposed to be incorporated is the entire town of or an entire school, lighting, fire or water district, suitably describing such district with common certainty).

Such territory contains a population of, as appears from the enumeration hereto attached.

Dated

(Signatures and residences).

The proposition shall be signed by the persons proposing such incorporation, with the addition of the town in which they respectively reside. There shall be attached to said proposition and delivered to said supervisor or supervisors concurrently therewith, a written consent to the proposed incorporation in substantially the following form:

CONSENT

TO THE

Proposed incorporation of the village of

The undersigned, owners of one-third in value of the real property within the territory described in the proposition hereto attached, as assessed upon the last preceding town assessment roll, hereby consents to the incorporation thereof as in said proposition set forth.

Dated

Signatures.	Residences.	Assessments.

The said consent shall be signed by owners of real property, situated within such territory constituting one-third in value thereof, as assessed upon the last preceding town assessment roll, with the addition of their places of residence and the assessment of their said real property, respectively. A list of the names of the inhabitant of such territory shall be attached to and accompany the proposition. At the time of the delivery of the proposition the sum of fifty dollars shall be deposited with one of the supervisors for the purpose specified in this article.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 3, as amended by L. 1903, Ch. 139 and L. 1904, Ch. 35.

Amended by L. 1909, Ch. 555, and L. 1915, Ch. 31. In effect March 4, 1915.

Cross references. Deposit liable for certain fees and expenses where proceedings for incorporation fail, see post, sec. 24.

Petition may be served personally or by mail upon the Village Clerk. Rept. of Atty.-Gen. (1898), 92.

Where call for election is not signed by proper number it is an irregular and objectionable call, and election based thereon is an irregular and objectionable election. *Gardner v. Christian*, 70 Hun, 547.

Consent by husband; tenants by entirety. Where husband and wife own lands as tenants by the entirety each is a "freeholder" within the meaning of section 3 of the Village Law and should be counted as such in a proceeding for the proposed incorporation of a village.

Where a consent to the proposed incorporation was signed by a husband, who with his wife were tenants by the entirety within the territory, but not by her, the amount of their assessment on the last preceding tax roll cannot be considered in the aggregate of value of those who signed the consent.

Lands owned by tenants by the entirety were assessed to them jointly and in signing the consent to the proposed village incorporation each of said owners signed for one-half of the amount of the assessment. Held, that while the statement in the consent did not literally follow the words of the assessment-roll it was a substantial and reasonable compliance with the statute which was intended to be beneficial. *Matter of Village of Holcomb* (1916), 97 Misc. 241, 162 N. Y. Supp. 848.

Petition to have boundaries of incorporated village extended; description of territory to be annexed must state boundaries with "common certainty." Where a citizen of an incorporated village petitions the trustees of the village to submit to the electors thereof a proposition to extend the boundaries of the village, his right to have the petition granted depends upon whether the petition complies with the statute, which prescribes that the description of the territory to be incorporated shall "suitably" describe "such district with common certainty." Where such description leaves the exact boundaries doubtful and uncertain, the petition is defective and the petitioner may not compel the trustees to submit the proposition. *People ex rel. Underwood v. Village of Patchogue* (1916), 217 N. Y. 466, affg. 171 App. Div. 347, 156 N. Y. Supp. 1096.

Injunction will not lie to restrain proceedings on the ground of disproportionate benefits. *Stevens v. Minnierly*, 3 Hun, 566 (1875); see *Willis v. Staples*, 30 Hun, 644 (1883).

§ 4. Notice of hearing.

Within ten days after the receipt of such proposition the supervisor or supervisors shall cause to be posted in five public places in such territory and also published at least twice in each newspaper published therein, a notice, that a proposition for the incorporation of the village of (naming it) has been received by him or them, that at a place in such territory and on a day, not less than ten nor more than twenty days after the date of posting such notice, which place and date shall be specified therein, a hearing will be had upon such proposition; and that such proposition will be open for public inspection at a specified place in such territory until the date of such hearing.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 4.

Cross references. For Notice of Hearing on Proposition for Incorporation, see post, Form 1.

Editor's note. The provision requiring notice to be published was inserted

by the committee of the Assembly. It will be observed that throughout the law the publication of notices is required more frequently than heretofore.

§ 5. Proceeding on hearing.

The supervisor or supervisors shall meet at the time and place specified in such notice, and shall hear any objections which may be presented against such incorporation upon either of the following grounds.

1. That a person signing such proposition is not qualified therefor, or

2. That the persons signing such consent are not the owners of one-third in value of the real property within such territory, as assessed upon the last preceding town assessment roll, or

3. That, if the territory is less than an entire town, it contains more than one square mile, and does not conform to the boundaries of an entire lighting, fire, water or school district, or

4. That the population of the territory is less than two hundred.

All objections must be in writing and signed by one or more resident taxpayers of a town in which some part of the proposed village is situated. Testimony may be taken on such hearing, which shall be reduced to writing and subscribed by the witnesses. The hearing may be adjourned, but must be concluded within ten days from the date fixed in the notice.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 5, as amended L. 1899, Ch. 154; L. 1903, Ch. 139 and L. 1904, Ch. 35.

Amended by L. 1909, Ch. 555, and L. 1915, Ch. 31. In effect March 4, 1915.

Editor's note. The objections to be raised at the hearing are such as substantially affect the legality of incorporation, and having been once settled cannot be raised after an election upon the question of incorporation. This feature of the new law prevents a long legal conflict after the people have determined in favor of incorporation.

§ 6. Decision of supervisor.

Within ten days after such hearing is concluded the supervisor or supervisors shall determine whether the proposition, consent and papers filed therewith comply with this chapter, and shall within such time make and sign a written decision accordingly, and file it or a duplicate thereof in the office of the town clerk of each town in which any part of such proposed village is situated. The proposition for incorporation, consent and papers attached thereto, a copy of the notice, the objections, testimony and minutes of proceedings taken and kept on the hearing; shall also be filed with such decision in one of such town clerk's offices. If the decision be adverse to the proposition, it shall contain a brief statement of the reasons upon which it is based. If no appeal be taken from such decision within ten days from the filing thereof, it shall be final and conclusive.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 6, as amended L. 1903, Ch. 139.

Cross references. Form of Decision of Supervisor, see post, Form 2.

Editor's note. If the decision of the supervisors is adverse and no appeal is duly taken, the only recourse is to commence a new proceeding. This may be done immediately, and may describe the same territory and be commenced by the same petitioners.

No appeal lies from decision of County Court to the Appellate Division, from an adverse decision of the supervisors. *Matter of Village of Cedarhurst*, 121 App. Div. 576 (1907), 106 N. Y. Supp. 275.

§ 7. Notice of appeal from decision of supervisor.

If the decision sustains the proposition for incorporation, a resident taxpayer of a town in which any part of such proposed village is situated may appeal therefrom by serving a notice of appeal upon each town clerk with whom the decision was filed, and on at least three of the persons who signed the proposition. If the decision be adverse, five of the persons who signed the proposition may join in an appeal therefrom, by serving a notice of appeal upon each town clerk with whom the decision was filed, and on each person who signed objections to the proposition. All appeals shall be taken to the county court of the county in which the proposition, notice, objections and testimony are filed, and the notice of appeal must be served within ten days after the filing of the decision.

The town clerk with whom the proposition and other papers are filed, must within five days after service upon him of the notice of appeal, transmit all such papers to the county judge.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 7.

Cross references. Manner of serving notice, see post, section 330; notice of appeal from favorable decision, see post, Form 3.

Proceedings are initiated before the Supervisor and not before the County Court. *Matter of Village of Cedarhurst*, 121 App. Div. 576 (1907), 106 N. Y. Supp. 275.

§ 8. Hearing and decision of appeal.

A person, except a town clerk, by or upon whom the notice of appeal is served, may bring on the appeal for argument before the county court, upon a notice of not less than ten nor more than twenty days. Such notice must be served upon all parties to the appeal, except a town clerk.

The county court shall hear such appeal, and, within ten days after the date fixed in the notice of argument, shall make and file an order affirming or reversing the decision. The county judge shall file such order, together with the papers upon which the appeal was heard, with the town clerk by whom the papers were transmitted to him. Such order shall be final and conclusive. No costs of the appeal shall be allowed to any party.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 8.

Cross references. Manner of serving notice, see post, section 330; notice of argument of appeal, see post, Form 4; decision of court upon appeal, see post, Form 5.

Order of County Court final and conclusive on appeal from decision of the supervisor, and a further appeal to the Appellate Division is not authorized. *Matter of Village of Cedarhurst*, 121 App. Div. 576 (1907), 106 N. Y. Supp. 275.

§ 9. When election may be held.

An election to determine the question of incorporation upon such proposition shall be held in either of the following cases:

1. Where a decision has been made sustaining the proposition, and an appeal has not been taken therefrom.
2. Where an appeal has been taken from a decision sustaining the proposition, and such decision has been affirmed by the county court.
3. Where an appeal has been taken from an adverse decision, and the decision has been reversed by the county court.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 9.

§ 10. Notice of election.

Within five days after the right to an election is complete the town clerk with whom the proposition and other papers are filed shall give notice of an election to be held in such territory at a specified time and place. The notice shall be signed by the town clerk and posted in ten conspicuous places in such territory, and also published at least twice in each newspaper published therein, and it shall fix a time for such election, not less than fifteen nor more than twenty-five days from the date of the posting thereof. Such election shall be held at a convenient place in such territory between the hours of one o'clock in the afternoon and eight o'clock in the evening, but shall not be held upon a day of a town meeting or of a general election in a town in which any part of the proposed village is situated.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 10. Originally revised from L. 1870, Ch. 291, tit. 1, sec. 7 as amended by L. 1896, Ch. 923.

Amended L. 1910, Ch. 416, in effect June 7, 1910.

Cross references. Notice of Election, see post, Form 6.

Notice signed by de facto clerk is valid where after his removal from the town he continues, with the consent of the other village officers, to perform the duties and draw the salary of his office. *Matter of Collins*, 75 App. Div. 87, 77 N. Y. Supp. 702 (1902).

Sufficiency of Notice. See *Matter of Village of Lynbrook* (1911), 142 App. Div. 487.

§ 11. Conduct of election.

Such election shall be held at the time and place specified. The town clerk giving such notice shall serve a copy thereof upon the supervisor and town clerk of each town, in which any part of the proposed village is situated, at least ten days before the date fixed for such election. Two or more of such officers, including the town clerk giving such notice, shall constitute the board of inspectors to conduct such election. If only one of the officers attend at the time and place fixed for the election, he shall appoint an elector of such territory to act with him as an inspector of such election. If no officer attend, the electors present may choose two of their number to act as inspectors. The inspectors shall file the constitutional oath of office with the town clerk with whom the proposition was filed. Such inspectors of election shall possess all the powers conferred by law upon a board of inspectors of election at a town meeting, so far as the same are applicable. The ballot at such election may be either written or printed, and shall contain either the words "for incorporation," or "against incorporation."

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 11. Originally revised from L. 1870, Ch. 291, tit. 1, sec. 8, as amended by L. 1892, Ch. 194, sec. 9, as amended L. 1896, Ch. 923, tit. 8, sec. 1.

Cross references. Manner of serving notice, see post, section 330; electors acting as inspectors entitled to compensation, see post, section 23.

Power of inspectors of election defined. Matter of Village of Webster, 102 App. Div. 202 (1905).

Ballots and conduct of election need not conform to Election Law. Village of Harrisville v. Lawrence, 66 Hun, 304; Matter of Taylor, 150 N. Y. 242, aff'g 8 App. Div. 248; 38 N. Y. Supp. 348 (1896); see post Election Law; see Jewett's Election Manual.

§ 12. Qualification of electors.

Each elector qualified to vote at a town meeting, who has been a resident of such territory for at least thirty days next preceding such election, and who is the owner of property within such territory which was assessed upon the last assessment-roll of the town, may vote at such election. A woman who possesses the qualifications to vote at a town meeting, except the qualification of sex, and who has been a resident of such territory for at least thirty days next preceding such election, and who is the owner of prop-

erty, within such territory, which was assessed upon the last assessment-roll of the town, may vote at such election.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 12, as amended by L. 1906, Ch. 404; originally revised from L. 1870, Ch. 291, tit. 1, sec. 9, as amended by L. 1896, Ch. 923.

Editor's note. The general Village Law provided that electors liable to be assessed for the ordinary and extraordinary expenditures of the village should be qualified. Under section 12 it is not necessary that the property should be assessed to the person claiming to be qualified. If at the time of offering his vote he or his wife is the owner of property which was assessed to any one on the preceding roll, it is sufficient to qualify him in that respect.

Husband and wife owning property by entirety, assessed upon the last assessment roll, may vote at an election for the incorporation of a village. Rept. of Atty.-Gen., Mch. 3, 1911.

Requirement that voter be taxpayer is not unconstitutional. *Spitzer v. Village of Fulton*, 172 N. Y. 289 (1902), aff'g 61 App. Div. 612.

§ 13. Ballot boxes where territory is in more than one town.

If the proposed village is situated in more than one town, a separate ballot box shall be provided for each town, and the ballot of each person voting at such election shall be deposited in the ballot box assigned to the town in which he resides.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 13.

Editor's note. Such manner of voting unnecessary in order to determine whether a majority of the votes of each town are in favor of incorporation as required by section twenty-one.

§ 14. Canvass of election.

Immediately after the closing of the polls of the election the board of inspectors shall canvass the ballots cast thereat, and make and sign a certificate of the holding of the election and of the canvass, showing, if the territory is wholly within one town, the whole number of ballots, the number for incorporation, and the number against incorporation; or if it includes parts of two or more towns, showing such facts separately as to each town. Within three days after the election, the inspectors shall file such certificate in the office of the town clerk with whom the proposition and other papers are filed. If the certificate shows that a majority of the votes cast at such election in each town included in the territory is against the proposition to incorporate, then no other election shall be held on such proposition within such town or towns within two years from the date of such election at which such proposition was voted down.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 14; originally revised from L. 1870, Ch. 291, tit. 1, sec. 10, as amended L. 1892, Ch. 194, tit. 8, sec. 2. Amended by L. 1911, Ch. 114.

Cross references. Certificate of canvass, see post, Form 7.

Statute further provides "If two or more ballots shall be found in the box so folded together as to present the appearance of a single ballot, they shall be destroyed, if the whole number of ballots in such ballot box exceeds the whole number of ballots shown by the poll books and ballot clerk's statement to have been deposited therein and not otherwise." (Election Law, sec. 110, subd. 1 as amended by Laws 1898, Ch. 335.) *Matter of Village of Webster*, 102 App. Div. 202 (1905).

Where ballots exceed number shown by poll book inspector should draw out as many ballots as shall be equal to such excess and without unfolding, destroy the same. *Matter of Village of Webster*, 102 App. Div. 202 (1905); see Subd. 1, sec. 110, Election Laws 1898, Ch. 309, as amended by Laws 1898, Ch. 335; see *Jewett's Manual*, sec. 367, page 184.

§ 15. Appeal from election.

If the certificate shows that a majority of the votes cast at such election in each town included in the territory is in favor of incorporation, a person qualified to vote at such election may appeal therefrom to the county court of the county in which the proposition and other papers are filed.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 15.

Statutory method exclusive and validity of proceedings cannot be attacked collaterally. *Gardner v. Christian*, 70 Hun, 547 (1893), 24 N. Y. Supp. 339; *Matter of Elba*, 30 Hun, 550 (1883); *Willis v. Staples*, 30 Hun, 644 (1883).

Certiorari not proper remedy to review proceedings for incorporation. *People v. Village of Nelliston*, 18 Hun, 175 (1875).

This section does not authorize an appeal to the County Court from a certificate showing the result of an election for the incorporation of a village under Article 12. *Matter of Village of Sag Harbor*, 32 Misc. 624 (1900).

§ 16. Notice of appeal and return.

An appeal may be taken by serving a notice of appeal on the town clerk with whom the certificate of incorporation is filed, and by posting the same in five conspicuous places in such territory. The notice shall be signed by the appellant and must state briefly the grounds upon which the appeal is taken. It must be served and posted within ten days after the filing of the certificate of election.

The town clerk on whom the notice of appeal is served, must, within five days thereafter, transmit to the county judge a certified copy of such notice of appeal and of the certificate of election.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 16.

Cross references. Manner of serving notice, see post, section 330; notice of appeal from election, see post, Form 8; notice of argument, see post, Form 4.

Statutory requirement that appeal shall be taken within ten days after the filing of certificate of election is not unreasonable. *Gardner v. Christian*, 70 Hun, 547 (1893).

§ 17. Hearing and decision of appeal.

Upon such appeal the county court can only consider questions relating to the validity or regularity of the election. An appeal may be brought on for hearing by the service of a notice of argument by the appellant upon the town clerk, and by posting the same in five conspicuous places in such territory. The notice shall state the time of the hearing, which must be not less than ten days after the service and posting thereof. On such hearing, any number of qualified electors of the territory, not exceeding five, may appear in support of the validity or regularity of such election. The county court may take testimony, either orally or by affidavit, as it may determine. Such appeal must be heard and decided and the decision filed within thirty days after service of the notice of appeal; and the county court has no jurisdiction to consider the same after the expiration of that period. The county court may sustain or set aside the election. The decision must be filed by the county judge in the office of the town clerk on whom the notice of appeal was served. He shall also file a copy of the decision with the county clerk, together with the papers transmitted to him by the town clerk.

No costs shall be allowed to any party on such appeal.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 17.

Cross references. Notice of argument of appeal, see post, Form 4; decision of court on appeal, see post, Form 5.

§ 18. Appeal to appellate division.

If the county court sustains the election, an appeal may be taken from such decision to the appellate division of the supreme court. Such appeal brings up for review all proceedings in the county court, and a case on appeal must be made and settled by the county judge as on an appeal from a judgment of the county court. Such appeal shall be taken within ten days after the filing of the decision, by the service of a notice of appeal upon the county clerk with whom a copy of the decision is filed, and upon each person who appeared in support of the election in the county court.

The proceedings for bringing on the appeal and the hearing and decision thereof by the appellate division are regulated by the code of civil procedure.

The appellate division may affirm the decision of the county court or reverse the same and set aside the election.

Within ten days after the determination of the appeal by the appellate division, a certified copy of its decision or order must be filed in the office of the town clerk with whom the proposition is filed.

No costs shall be allowed to any party on appeal to the appellate division.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 18.

§ 19. Stay on appeal.

An appeal to the county court or to the appellate division stays all proceedings for the election of officers or otherwise in such proposed village until the determination of such appeal.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 19.

§ 20. New election.

If the election be set aside on appeal, a new election shall be held. The right to such an election shall be complete upon the filing of the decision on appeal with the town clerk. He shall thereupon give notice of another election. All the provisions herein contained regulating the first election apply to proceedings for a new election, including the service and posting of notices, the conduct of the election, the canvass and certification of the result, and appeals therefrom. A new election shall be held in like manner if any election is set aside on appeal.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 20.

Second election can be held upon order of county judge and notice signed by inspectors of the previous election, without notice signed by twenty electors, as required for the first election. *People v. Snedeker*, 160 N. Y. 350 (1899), aff'g 30 App. Div. 1.

§ 21. When village deemed incorporated.

If the territory is wholly within one town, and a majority of the votes cast is in favor of incorporation, or if it includes parts of two or more towns and a majority of the votes cast in each

town is in favor of incorporation, then such territory shall become and be an incorporated village under this chapter from and after the date of such election, and upon receipt by the supervisor of the town or towns in which the territory constituting the village is situated, of the certificate of the secretary of state under the seal of his office certifying that he has received and has placed on file in his office an outline map and description of the corporate limits of such village, certified as being true and correct by the supervisor of the town or towns in which the territory constituting such village is situated, together with the date of filing the same in his office. The certificate of the secretary of state herein required shall become a record of the village clerk's office, and the date of the filing of the map and description by the secretary of state shall complete the incorporation and be deemed the date of incorporation of such village, unless the election is set aside on appeal as herein provided.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 21, as amended by L. 1907, Ch. 607. In effect August 7, 1907.

Cross references. The term "Village" means incorporated village. See post, General Construction Law, sec. 54.

Admission in pleading will establish incorporation of village. *Fox v. Village of Fort Edward*, 48 Hun, 365 (1888).

Recitals in legislative act of incorporation are evidence of incorporation against the village in whose favor the act was passed. *Fox v. Village of Fort Edward*, 48 Hun, 363 (1888).

§ 22. Report of incorporation.

After ten and within fifteen days from the filing of the certificate of election, if no appeal has been taken, or within fifteen days after the filing of a final decision sustaining the election, the town clerk with whom such certificate is filed shall deliver a certified copy thereof to the secretary of state, tax commission and to the county clerk of each county in which any part of such village is situated, together with a statement of the population of such village as it appears by the proposition for incorporation.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 22.

Amended by L. 1917, Ch. 25, in effect March 1, 1917.

Cross references. Certificate of canvass, see post, Form 7.

Statement of population required to be filed as provided in the above section is evidence of the population of the village for the purpose of determining the amount to be paid for a liquor tax certificate. *People ex rel. Briggs v. Lyman*, 48 App. Div. 484 (1900); *aff'd* 163 N. Y. 602.

§ 23. Compensation for services under this article.

The following compensation is payable for services under this article:

1. To supervisors for services in connection with the proposition for incorporation, two dollars for each day actually and necessarily spent by them.

2. To town clerks, the compensation allowed by law for other similar services, and for services the compensation for which is not fixed by law, two dollars for each day actually and necessarily spent by them.

3. To electors acting as inspectors of election, two dollars for each day actually and necessarily spent in such service.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 23.

§ 24. Payment of expenses if village not incorporated.

If the incorporation of the proposed village be not effected by the proceedings authorized in this article, the fees and expenses of the town officers or other persons performing official services shall be paid from the fund deposited with the supervisor. If the persons making such deposit and the officers and persons entitled to compensation for services in such proceedings do not agree upon the amounts payable therefor, such fees and expenses shall be taxed by the county judge of the county in which the proposition was filed, and the amounts taxed by him shall be paid to the persons entitled thereto.

The remainder of the sum deposited, if any, or if the proceedings result in the incorporation of the village, the whole of such deposit, shall be returned to the persons making it by the supervisor on demand.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 24.

§ 25. Payment of expenses of incorporation.

The following expenses incurred in the proceedings for incorporation shall be a charge against the village:

1. The reasonable necessary expenses incurred by the persons signing the proposition prior to the delivery thereof to the supervisor.

2. If on appeal from the decision of the supervisor the proposition for incorporation be sustained, the reasonable necessary

expenses on such appeal, not exceeding fifty dollars, incurred by the persons signing the proposition.

3. The fees payable to town officers and to electors acting as inspectors of election for services performed by them under this article and their necessary disbursements.

4. If on appeal from the certificate of election, showing that a majority of the votes cast at an election held under this article is in favor of incorporation, the election is finally sustained, the reasonable necessary expenses on such appeal, in both the county court and the appellate division, incurred by those appearing in support of the validity or regularity of such election.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 25, as amended by L. 1905, Ch. 404.

Cross referencea. Upon appeal involving only regularity of election, no costs or expenses allowed either party. See Ante sections 17 and 18.

§ 26. First election of officers, when held.

An election of officers of the village shall be held in either of the following cases:

1. After the lapse of ten days from the filing of the certificate of election showing the incorporation, unless an appeal has been taken therefrom.

2. If such an appeal has been taken, after the lapse of ten days from the filing of the decision of the county court sustaining the election, unless an appeal has been taken therefrom.

3. If an appeal has been taken from the decision of the county court, after the filing of the decision of the appellate division of the supreme court sustaining the election.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 26.

Consolidator's note (1909). Relates to the first election of village officers after incorporation. The first two subdivisions provide that it shall be held "after the lapse of ten days" from the filing of the certificate of election showing the incorporation or from the filing of the decision of the County Court. Such lapse of time would seem to be necessary from the provisions of secs. 27, 28, but they were omitted from subd. 3, apparently from oversight. As the subdivision now stands, the election could be held immediately after the decision of the appellate division, and yet sec. 28 requires at least ten days' notice, and the clerk is by sec. 27 allowed five days to give such notice. It is therefore, recommended that the words "the lapse of ten days from" be inserted in the second line of subd. 3, of this section.

§ 27. Appointment of village clerk; inspectors of election.

Within five days after the right of an election of officers is complete, the town clerk with whom the proposition for incorporation was filed, shall appoint the following officers:

1. A village clerk, who shall serve until his successor is chosen.
2. Three qualified electors of the village to serve as inspectors of such election, not more than two of whom shall be members of the same political party.

The town clerk shall file such appointments in his office and deliver a copy thereof to each of the persons so appointed, who, within three days after their appointment, shall file with such town clerk the constitutional oath of office.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 27.

Cross references. Appointment of officers, see post, Form 9.

§ 28. Notice of election of officers.

Within five days after his appointment, the village clerk shall give notice for an election of officers. Such notice shall be posted in ten conspicuous places in the village and published in a newspaper therein, if any. It shall also contain the following particulars:

1. The place in such village where the election is to be held.
2. The date of such election, which shall not be less than ten nor more than fifteen days after the posting of such notice.
3. The hours for holding such election, which shall be for the space of at least four consecutive hours between ten o'clock in the forenoon and four o'clock in the afternoon.
4. The officers to be elected.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 28.

Cross references. Officers to be elected, see post, section 29; notice of election, see post, Form 10.

§ 29. Officers to be elected; terms of office.

The following officers shall be chosen at such first election: A president, two trustees, a treasurer and a collector.

If such election be held after the date of an annual election under this chapter, and before the first day of October, the terms of all such officers shall expire at the end of the current official year. If such election be held after the thirtieth day of September, and on or before the date fixed for the next annual election,

the president, one trustee, the treasurer and the collector shall hold their offices until the end of the next official year, and one trustee shall hold his office during the next two official years.

The terms of office of officers elected under this section commence as soon as they have qualified.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 29.

Cross references. Official year defined, see post, section 43; number of trustees allowed, see post, section 44; special election to fix number, see post, section 45.

Editor's note. If village entitled to more than two trustees under section 44, a special election may be held at any time before the date of the annual election for fixing the number, see sec. 45. The official year, as defined by section 43, begins at noon on the Monday following the third Tuesday in March and ends at noon on the Monday following the third Tuesday in March next succeeding.

§ 30. Conduct of election.

All persons qualified to vote at town meetings, and who have been residents of the territory thirty days prior to such election may vote for such officers. The inspectors appointed by the town clerk or any two of them shall conduct such election. The provisions of this chapter relating to the election of village officers at an annual election, including the canvass and certification of the result, apply to such first election, so far as practicable.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 30.

Cross references. Qualification of voters at town meetings, see Const. Article 2, sec. 1; conduct of election, canvass and certificate of result, see post, sections 55 and 56; resolution designating place and time of annual election, see post, Form 16; notice of election, see post, Form 17; certificate of canvass, see post, Form 18; resolution proposing to submit propositions, see post, Form 20.

§ 31. First meeting of board of trustees.

Within five days after such first election, the president and trustees elected thereat shall meet and appoint a clerk and a street commissioner. They may also appoint such other officers as are authorized by law.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 31.

§ 32. Temporary loan for expenses.

The board of trustees first elected may borrow not exceeding five hundred dollars upon the credit of the village for the purpose

of raising funds to defray the expenses of incorporation, and such other necessary expenses as may be incurred before the collection of the first annual tax, and the amount so borrowed shall be included in the first tax levy.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 32.

§ 33. Incorporation where population is fifty or more and less than two hundred.

A territory not exceeding one square mile situated entirely within a town, containing a population of fifty or more and less than two hundred, and not including a part of a city or village, may be incorporated as a village under this chapter upon complying with the provisions thereof, so far as the same are not inconsistent with this section, if the proposition instituting the proceeding for the incorporation thereof be signed by ten adult freeholders residing in such territory, and if the consent to the proposition for incorporation be signed by owners of real property situated within such territory and constituting three-fourths in value thereof as assessed upon the last preceding assessment-roll, and if three-fourths of the votes cast at the election to determine the question of incorporation be in favor of incorporation. All proceedings heretofore taken for the incorporation of a village wherein the provisions of this section, as hereby amended, have been complied with, are hereby legalized, confirmed and made effectual and valid.

Derivation. Added by L. 1910, Ch. 258. Amended by L. 1913, Ch. 658. In effect May 23, 1913.

ARTICLE III.

OFFICERS AND ELECTIONS.

- Section 40. Classification of villages.
- 40a. Change of classification.
 - 41. Qualification of voters.
 - 42. Eligibility to office.
 - 43. List of village officers; official year; mode of choosing; terms of office.
 - 44. Number of trustees.
 - 45. Changing number of trustees.
 - 46. Election of trustees by wards.
 - 47. Election of police justice.
 - 48. Election of assessors.
 - 49. Election districts.
 - 50. Officers to be elected at annual election.
 - 51. Inspectors of election.
 - 51a. Registration of voters.
 - 52. Annual elections.
 - 53. Canvass of annual election.
 - 54. Failure to designate terms.
 - 55. Special elections of officers.
 - 56. Submission of propositions; special elections.
 - 56a. Defeated propositions not to be submitted for one year.
 - 57. Votes upon propositions to be by ballot.
 - 58. Official undertakings.
 - 59. Notice to person chosen to a village office.
 - 60. Resignations and removals.
 - 61. Filling of vacancies.
 - 62. Refusal of officer to surrender his office.
 - 63. Separate boards of commissioners.
 - 64. Municipal boards, consolidation.
 - 65. Continuance of separate boards.
 - 66. Continuance of municipal board.
 - 67. Abolition of separate or municipal boards.
 - 68. Books and papers to be open to inspection.

§ 40. Classification of villages.

Villages are divided into classes according to their population as shown by the latest enumeration, village, state or federal, as follows:

First class.—Villages containing a population of five thousand or more.

Second class.—Villages containing a population of three thousand and less than five thousand.

Third class.—Villages containing a population of one thousand and less than three thousand.

Fourth class.—Villages containing a population of less than one thousand.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 40, as amended L. 1906, Ch. 602.

Editor's note. Population of village may be ascertained by inquiry at the office of the Secretary of State. So far as such enumerations were reported to the Secretary of State, they are published in the legislative manual.

§ 40-a. Change of classification.

Whenever any village has a population as shown by the latest enumeration, village, state or federal, in excess of the population required to be a village of a certain class, and sufficient to entitle it to be a village of a higher class, the board of trustees of such village, by resolution duly adopted at a regular meeting or a special meeting of said board of trustees called for the purpose, shall cause a copy of such enumeration and resolution to be filed in the office of the secretary of state, and upon such filing and thereafter such village shall be a village of the class denoted by its population, and entitled to all privileges governing villages of such class.

Derivation. Added by L. 1910, Ch. 321, in effect May 18, 1910.

§ 41. Qualification of voters.

A voter at a village election, other than the first, must possess the following qualifications:

1. To entitle him to vote for an officer, he must be qualified to vote at a town meeting of the town in which he resides, and must have resided in the village thirty days next preceding such election.

2. To entitle him to vote upon a proposition, he must be entitled to vote for an officer, and he must also be the owner of property in the village assessed upon the last preceding assessment-roll thereof. A woman who possesses the qualifications to vote for village officers, except the qualification of sex, who is the owner of property in the village assessed upon the last preceding assessment-roll thereof, is entitled to vote upon a proposition to raise money by tax or assessment, or for the dissolution or change of name of the village or for the borrowing of money upon the bonds or other obligations of the village, payable in future fiscal years for

the purpose of purchasing, constructing and maintaining the village improvements specified in section one hundred and twenty-eight.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 41, as amended by L. 1901, Ch. 509 and L. 1908, Ch. 404; originally revised from L. 1870, Ch. 291, tit. 2, sec. 13, as amended by L. 1895, Ch. 146.

Amended by L. 1910, Ch. 135, and L. 1915, Ch. 499. In effect May 3, 1915.

Editor's note. Ownership of property at the time of its assessment is not necessary under this section. In rare instances this may lead to abuse, but on the whole seems a wiser provision than to require actual assessment to the individual.

Cross references. Qualifications of voters, see Const. Art. 2, sec. 1; Jewett's Manual.

Property need not have been assessed to the elector or his wife on the last assessment roll. Rept. of Atty.-Gen. (1903), 299.

Failure to place name on the roll will not deprive a taxpayer of his right to vote. Rept. of Atty.-Gen. (1897), 245.

An elector of a village, whose name does not appear on the last assessment-roll, is not entitled to vote on appropriations at a village election by reason of the fact that his wife is the owner of property assessed on the last assessment-roll of the village. (Opinion of State Comptroller, Feb. 11, 1916), 8 State Dept. Rep. 594.

Property qualification is constitutional. *Spitzer v. Village of Fulton*, 172 N. Y. 235, aff'g 61 App. Div. 612; 69 N. Y. Supp. 1146 (1901), 33 Misc. 257; 68 N. Y. Supp. 660 (1900).

Women may vote upon a proposition to raise money by tax or assessment or for the dissolution of the village. See *People v. Moir*, 62 Misc. 35 (1908).

Bond issue not invalid because women taxpayers were not allowed to vote on the question of their issuance. *Ward v. Kroff*, 120 N. Y. Supp. 476 (1910).

A married woman may vote on proposition for extension of water system where she owns property assessed on last preceding assessment roll, but her husband cannot vote unless he has the property qualification. Rept. of Atty.-Gen., Mch. 6, 1911. See also *Village of Waverly v. Waverly Water Works Co.* (1910), 69 Misc. 373, 378.

Ownership of real estate which was assessed upon the last preceding roll is sufficient. It is not necessary that the property should have been owned by the party offering his vote at the time it was assessed. Rept. of Atty.-Gen., Mch. 8, 1911.

Neither a veteran nor his wife is entitled to vote upon a proposition where property owned by them is marked "exempt" upon the assessment roll. Rept. of Atty.-Gen., Mch. 9, 1911.

A voter's illegal exclusion from a special election does not invalidate the tax authorized thereat so far as he is individually concerned. Rept. of Atty.-Gen. (1913), Vol. 2, p. 466.

Ownership of real property is not necessary. The statute includes property of any kind that is assessed. Rept. of Atty.-Gen., July, 1913.

Equitable ownership of realty satisfies requirement of this section. Report of Atty.-Gen., 1912, vol. 2, p. 328.

§ 42. Eligibility to office.

A president, or trustee, or a fire, water, light, sewer, cemetery or police commissioner must, at the time of his election, be owner of property assessed to him on the last preceding assessment roll, and must also be the owner during the term of his office of property assessed to him on the assessment roll of said village; except that in a village of the fourth class, such an officer must, at the time of his election or appointment and during his term, be the owner of property within such village assessed upon the last preceding assessment roll, and except that a president or trustee elected at the first village election must be the owner of property assessed upon the last preceding town assessment roll. Any resident elector is eligible to any other village office. A resident woman, who is a citizen of the United States, and of the age of twenty-one years, is eligible to the office of village clerk or deputy clerk. A person shall not hold two village offices at the same time, except the offices of collector and police constable or water and light commissioner; and except that village trustees may also be water commissioners.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 42, as amended by L. 1906, Ch. 452; originally revised from L. 1870, Ch. 291, tit. 2, sec. 8, as amended by L. 1893, Ch. 618, sec. 9, tit. 8, sec. 21; L. 1871, Ch. 696, sec. 1; L. 1875, Ch. 181, sec. 2, as amended by L. 1891, Ch. 74. The exceptions in the last sentence are new.

Amended by L. 1913, Ch. 53, and L. 1915, Ch. 152. In effect March 30, 1915.

Cross references. Qualifications for office generally, see Public Officers Law, section 3; resident woman may be deputy clerk, see post, section 43.

Editor's note. The property qualification provided hereby of course enables a candidate for office to become the owner of assessed property for the mere purpose of establishing his eligibility, but the provision requiring that such ownership shall continue "during his term" would seem to protect against serious abuse of the privilege.

While legislature cannot exclude any certain class of citizens from the right to hold office it may prescribe certain tests to secure properly qualified candidates. *Scott v. Village of Saratoga Springs*, 115 N. Y. Supp. 796 (1909).

Assessor. One holding office of back tax collector cannot be appointed assessor. (Opinion of Atty.-Gen. 1917), 10 State Dept. Rep. 503.

Village collector may also act as town constable and village policeman. Rept. of Atty.-Gen. (1896), 123.

Election to office while holding another office. The provision of this section that no person shall hold two village offices at the same time, with certain exceptions, does not relate to the situation existing on the day of election, and, hence, a village trustee who was duly elected village president is entitled to the latter office if he resigned the former before his term began. *People ex rel. Miller v. Mynderse* (1910), 140 App. Div. 789, 126 N. Y. Supp. 198, 201 N. Y. 14.

Ownership of property. It is an essential qualification for a village trustee that he must be "owner of property assessed to him." It is not sufficient that it should be assessed to a corporation of which he is a director. Rept. of Atty.-Gen., Mch. 6, 1911.

Ownership of an individual interest in property assessed on the last preceding assessment roll is a compliance with this section. Rept. of Atty.-Gen., Mch. 9, 1911. Ownership of stock in a local corporation is insufficient. Rept. of Atty.-Gen., Mch. 15, 1911.

It seems that the object and purpose of this section is simply to insure that those elected as trustees of a village shall be property owners and taxpayers of the village, to the end that they may have the proper interest in the village welfare and prosperity. *Jewell v. Mohr* (1912), 136 N. Y. Supp. 273.

Ousting village president from office. In an action to oust defendant from office of president of village the defendant is entitled to judgment in his favor where it is conceded that property was assessed to him on the last assessment roll and at the time of his election he was in fact the owner of the part of the property so assessed to him upon the last assessment roll. *People ex rel. Worth v. Kanar* (1913), 80 Misc. 552.

§ 43. List of village officers; mode of choosing; official year; terms of office.

Every village shall have a president, not less than two trustees, a treasurer, a clerk and a street commissioner. Except as herein provided, every village shall also have a collector, but a village of the first class may, upon the adoption of a proposition therefor at a special election, and a village of the second class may, upon the adoption of a proposition therefor at an annual or special election, determine that no collector shall thereafter be elected

therein. A village of the first or second class may also have a deputy clerk, and any village may have a village engineer.

There shall be a board of health in each village consisting of the board of trustees of such village. The president, trustees, treasurer, collector, police justice, and assessors shall be elective officers, except that in a village of the first or second class the treasurer may be appointed, upon the adoption of a proposition therefor at a village election. All other village officers shall be appointed by the board of trustees, except as otherwise provided herein.

In all villages the officers of clerk and street commissioner may be elective, upon the adoption of a proposition therefor at a village election, and after the adoption of such a proposition, a proposition may be submitted for the appointment of such officers, at any subsequent village election. After a proposition has been adopted changing the method of filling such offices, another propo-

sition changing such method shall not be submitted until after a period of two years from the adoption of such prior proposition.

An "official year" begins at noon on the first Monday after the third Tuesday of March, and ends at noon on the same Monday in the next calendar year.

The term of office of the president, treasurer, collector, clerk, street commissioner and inspectors of election shall be one official year; of each trustee elected for a full term, two official years, and of a police justice, four calendar years.

The term of each village officer, except police justice, begins at noon on the first Monday after the annual election. A full term of the police justice begins on the first day of January succeeding the annual election at which he was elected.

After the first election in a village subject to the provisions of this chapter one-half of the trustees shall be elected each year for a full term.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 43, as amended by L. 1901, Ch. 155; originally revised from L. 1870, Ch. 291, tit. 2, sec. 1; sec. 3, as amended by L. 1892, Ch. 593; sec. 5, as amended by L. 1896, Ch. 522; L. 1875, Ch. 181, sec. 11; L. 1889, Ch. 375, sec. 2, as amended by L. 1891, Ch. 396.

Amended by L. 1915, Ch. 323. In effect April 17, 1915.

Cross references. Intrusion into public office, see Penal Law, sec. 1835; corrupt bargains for appointment, see Penal Law, secs. 1832-1834; refusal to surrender to successor, see Penal Law, sec. 1836; delivery of books and papers, see Public Officers Law, sec. 80; holding over until successor has qualified, see Public Officers Law, sec. 5; clerk to notify officers, see post, sec. 59; if collector is not elected, treasurer acts as receiver of taxes, see post, sec. 117.

Reviser's note (1897). This section of the revision fixes the Monday succeeding the annual election as the day upon which the terms of elective officers shall begin. By the original law, no term is definitely fixed, although impliedly the term ends on election day. The provision in relation to officers holding over until their successors are elected and have qualified is omitted from this section being fully covered by the Public Officers Law, sec. 5.

Editor's note. The committee of the Assembly made various changes in this section before reporting the bill. The second sentence, providing that a village of the first class may determine that no collector shall thereafter be elected, is new. In such a village the treasurer acts as receiver of taxes, as provided by section 117. The provision authorizing a deputy clerk is also new. By section 82 the clerk is required to act as the clerk of each village board. In villages of the first and second class, which are likely to have several different boards, possibly meeting at the same time, a deputy is almost indispensable. The committee also added the provision that in villages of the first or second class the treasurer may be appointed. The theory of the provision is that in large villages the board of trustees

should have direct supervision and control of the fiscal officer, especially where he acts as receiver of taxes, as provided by section 117. The committee also changed the method of electing trustees from that of electing all the trustees every two years to the method of electing one-half in alternate years. The latter provision seemed to meet with the approval of the larger number of villages.

Section 59 of the Village Law requires the clerk to notify each appointed or elected officer within three days after appointment or election, but the failure of the clerk to so notify would not, it seems, prevent an officer from duly qualifying and entering upon the duties of his office.

Local board of health, increase and decrease of membership. Rept. of Atty.-Gen. (1906), 429.

Appointment of board of health by the trustees fixes the number of members. Rept. of Atty.-Gen. (1903), 345.

Office of Assessor cannot be voted for and filled by election unless it shall have been previously determined. Rept. of Atty.-Gen. (1902), 191.

Member of board of health is a village officer. Matter of Board of Health, 43 App. Div. 236 (1899), 60 N. Y. Supp. 27.

Issuance of Commission to an appointed office is unnecessary. *Cotanch v. Grover*, 57 Hun, 272 (1890), 10 N. Y. Supp. 754.

Compare. *People v. Willard*, 44 Hun, 580 (1887).

Title to office cannot be determined in a taxpayer's action under the Code of Civil Procedure. *Fahy v. Johnstone*, 21 App. Div. 154 (1897), 47 N. Y. Supp. 402.

Veteran of Civil War is not entitled to a preference over a veteran volunteer fireman, in appointing a street commissioner although the former was the prior incumbent of the office. *People v. Village of Dobbs Ferry*, 63 App. Div. 276 (1901), 71 N. Y. Supp. 578.

§ 44. Number of trustees.

Villages in the several classes shall elect trustees as follows:

1. In the first class, not less than two nor more than eight.
2. In the second class, not less than two nor more than six.
3. In the third or fourth class, two or four.

Each village shall always have an even number of trustees.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 44, as amended by L. 1901, Ch. 7; originally revised from L. 1870, Ch. 291, tit. 2, sec. 2, as amended by L. 1895, Ch. 154.

Cross references. Special election of officers, see post, sec. 55.

Editor's note. Under former law the minimum number of trustees was three, maximum nine, an additional trustee being allowed for each 400 of population over 1,200.

Vacancies should be filled by special election called for that purpose. *People v. Board of Trustees*, 71 Hun, 188 (1893).

§ 45. Changing number of trustees.

Within the limitations herein prescribed, the number of trustees may be changed by adopting a proposition therefor at a special

election. If the number be increased, the additional trustees shall be elected at the next annual election. One-half of the additional trustees shall be elected for one year and one-half for two years. If the number of trustees be reduced, such reduction shall not take effect until the expiration of the terms of the trustees then in office.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 45.

Cross references. Conduct of special election, see post, sec. 56; time for holding special election, see Election Law, sec. 128; proposition to change number of trustees, see post, Form 11.

Editor's note. A special election for this purpose may be held at any time before the annual election. It should, however, be held a sufficient time before, so as to allow nominations for village officers to be filed with the village clerk at least fifteen days before the election (see Election Law, § 59), and the third Tuesday of March may occur on March 16th, in which case little time would be allowed for making such nominations.

Number of trustees can only be changed by special election. Rept. of Atty.-Gen. (1903), 262.

§ 46. Election of trustee by wards.

A village of the first or second class may elect trustees by wards upon the adoption of a proposition therefor at a special election. If such proposition be adopted, the board of trustees shall meet within twenty days thereafter and divide the village into wards of a number equal to one-half of the number of trustees which the village has a right to elect. Such wards shall contain a population as nearly equal as may be, and be of convenient and contiguous territory, in as compact form as practicable. The board of trustees shall make a certificate of such division, which shall contain a description of each ward, and shall file the same in the office of the village clerk, and publish it in each newspaper published in the village, at least twenty days before the next annual election. One trustee shall thereafter be elected annually in each ward, for a full term.

If after such division into wards, the number of trustees in the village be changed, the board of trustees shall, in like manner, make a new division into wards.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 49, as amended by L. 1906, Ch. 290; former section was substituted for L. 1870, Ch. 291, tit. 3, sec. 17, as amended by L. 1891, Ch. 160.

Cross references. Special election, see post, sec. 56; separate ballot boxes, see post, sec. 52; resolution dividing villages into wards, see post, Form 14.

Revisers' note (1897). The act of 1870 authorizes the election of trustees by districts, but makes no provision for the canvass of an election held by districts or generally for carrying out such method of election. The revision authorizes the election of trustees by wards in villages of the first class. It is not believed that there is any necessity for the election of trustees by wards in villages containing a population of less than 5,000. If the village contains but one election district and trustees are elected by wards, separate ballot boxes are to be provided for each ward. If the village contains more than one election district, and the trustees are elected by wards, the board of trustees are required to meet and canvass the result.

§ 47. Election of police justice.

The office of police justice is continued in every village in which it is now established. A village may establish the office of police justice by adopting a proposition therefor. A village, in which the office of police justice has been established, may abolish such office at an annual election, to take effect upon the expiration of the term of the police justice then in office.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 50; originally revised from L. 1870, Ch. 291, tit. 3, sec. 17, as amended by L. 1891, Ch. 160; Code Crim. Pro., sec. 75.

Cross references. Expiration of term of office, see post, sec. 351; criminal jurisdiction of village police justice, see post, sec. 182.

Revisers' note (1897). Section 17, title III of the act of 1870 provides, that the trustees of any village containing a population of at least two thousand, incorporated under the act of 1870, may, whenever in their opinion the public interest demands it determine that a police justice shall be elected in such village. Section 75 of the Code of Crim. Pro. provides, that upon the application, in writing, of twenty-five electors, the trustees of any village in the State may determine that a police justice shall be elected in such village. Section 17 of title III was added to the act of 1870 by L. 1871, chap. 688. The population limitation was then fixed at three thousand. Section 75 of the Code of Crim. Pro., adopted in 1881, contains no population limitation, but is general in its terms applying to all villages. Section 17, however, was amended in 1891, and the population limitation reduced from three to two thousand. The section provides that the office of police justice shall only be established after a vote in favor thereof at an annual or special election. The last sentence authorizing the electors of the village to abolish the office of police justice is new. There seems to be no reason why the electors of the village should not be authorized to abolish the office if for any reason they find it to be unnecessary or too expensive.

Editor's note. Proposition establishing office of police justice may be adopted at either an annual or special election.

No absolute right to compel trustees to furnish office. *People v. President, etc. of Nyack*, 18 App. Div. 318 (1897), 46 N. Y. Supp. 218.

Police justice. Creation of office is optional since the statute provides for the establishment or abolition of the same. *People v. Lovell*, 21 Misc. 570 (1897), 48 N. Y. Supp. 879.

Jurisdiction of justice of peace continues if office not established. *People v. Lovell*, 21 Misc. 570, 48 N. Y. Supp. 879.

§ 48. Election of assessors.

The board of trustees shall act as assessors of the village, or may appoint of their number a committee for that purpose, unless separate assessors are appointed or elected as provided by this section. If twenty-five electors qualified to vote upon a proposition shall present a petition to the board of trustees for the election of separate assessors, it shall submit to the next annual election a proposition therefor, and if such proposition be adopted, shall appoint three persons to be assessors of such village for the terms of one, two and three years, respectively, and thereafter at each annual election, one assessor shall be elected for a full term of three years, unless said petition shall be for the election of one assessor, and such proposition is adopted, in which case, the board of trustees shall appoint one person to be assessor of such village until the next annual election, at which election and each annual election thereafter, one assessor shall be elected for the term of one year. In a village of the first or second class, which now has no separate assessors, the board of trustees may, by resolution, direct that three assessors be elected at the next annual election, and they shall be elected accordingly for the terms of one, two and three years, respectively. At each annual election thereafter one assessor shall be elected for a full term of three years. A village having separate assessors, when this act took effect, either elective or appointive, may continue to elect or appoint assessors until such village shall decide by a proposition submitted at an annual election to have the board of trustees, or a committee thereof, act as assessors. If twenty-five electors qualified to vote upon a proposition, shall present a petition to the board of trustees to abolish separate assessors, it shall submit such proposition to the next annual election, to which it is entitled to be submitted under this act, and if adopted no assessors shall be elected or appointed, except that such village shall continue to elect or appoint assessors whose terms of office shall expire with the term of the assessor then in office having the

longest term to serve, after which time, the trustees or committee therefrom, shall act as assessors.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 51, as amended by L. 1898, Ch. 185 and L. 1907, Ch. 82; originally revised from L. 1870, Ch. 291, tit. 3, sec. 13, as amended by L. 1890, Ch. 213. Last sentence added by L. 1898, Ch. 195.

Cross references. Assessors in office continued, see post, sec. 351.

Revisers' note (1897). The present law provides for two conflicting systems of separate assessors. Section 13 of title III of the act of 1870, before amendment by L. 1890, chap. 213, provided that in villages of two thousand, the trustees, on petition of one hundred electors, should direct the election of three assessors. The amendment of 1890 added to the section a provision that in any village in which assessors are not elected, the board of trustees might appoint an assessor.

Editor's note. In any village the electors may require the submission of a proposition for the election of separate assessors. In a village of the first or second class the board may anticipate the electors and direct the election of a separate board of assessors.

§ 49. Election districts.

A village, containing not more than eight hundred qualified electors, shall constitute a single election district for village elections. If at an annual election, the number of votes cast for village officers shall exceed eight hundred, the board of trustees may by resolution, adopted at least thirty days before the next annual election, divide such village into election districts, containing not more than eight hundred voters. Such resolution shall specify the boundaries of each district, but a ward shall not be divided in the formation thereof, except to make two or more election districts wholly within such ward. Such resolution shall be published and posted with a notice of such election.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 52.

Cross references. Resolution dividing village into election districts, see post, Form 15.

Revisers' note (1897). There appears to be nothing in the original law authorizing the division of the village into election districts, except that contained in section 17 of title III of the act of 1870, authorizing the election of trustees by districts. Under the original law, there is no provision for a canvass of the vote or for the appointment of election district inspectors, and if the act of 1870 contemplated the holding of an election at several polling places, the scheme is very incomplete and unsatisfactory. The commissioners deem that there is no necessity of a separate polling place where the vote does not exceed eight hundred. This, however, does not prevent the division of the village into wards pursuant to section 49, or the election of trustees by wards, as it is provided by section 55 that

a village divided into wards and containing but one election district, shall have a separate ballot box for each ward.

Section 49 of the revision also provides that the wards shall not be divided in the creation of an election district. The reason for this is apparent. Section 54 of the revision provides for the election of inspectors, if the election is held at more than one polling place, otherwise the trustees and clerk of the village act as inspectors as provided by the act of 1870.

Editor's note. The bill as originally proposed made the division compulsory if the votes at an annual election exceeding 800. The committee of the Assembly substituted "may" for "shall."

§ 50. Officers to be elected at annual election.

Elective offices shall be filled at the annual election next preceding the expiration of the terms thereof. If a vacancy in an elective office occurs more than ten days prior to an annual election, at which a successor for a full term is not to be chosen, it shall be filled at such election for the remainder of the unexpired term.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 53; originally revised from L. 1870, Ch. 291, tit. 2, sec. 3, as amended by L. 1892, Ch. 593.

Revisers' note (1897). The second sentence, providing that a vacancy in an elective office, which shall have occurred more than ten days prior thereto, shall be filled at the annual election, is new. Section 55 requires election notices to be published and posted at least ten days before the election, thus preventing notices of vacancies occurring subsequent to ten days before the election.

Editor's note. Section 351 provides that the terms of all village officers in office when this chapter takes effect, except as otherwise provided and except of a police justice or an assessor, expire on the Monday following the third Tuesday in March.

§ 51. Inspectors of election.

If a village constitutes but one election district and a proposition for the registration of voters has not been adopted pursuant to section fifty-one-a of this chapter, the trustees, president and clerk of the village, after the first election of village officers, or such of them as are in office when an election takes place, shall be inspectors of election for the village; and one or more of them shall preside at all elections. If neither a trustee, the president

nor the clerk shall be present, the electors may appoint a chairman to preside, who shall have all the powers of an inspector. If a village is divided into election districts and a proposition for the registration of voters has not been adopted pursuant to section fifty-one-a of this chapter, the board of trustees shall, annually, at least thirty days before the annual election, appoint two inspectors of election for each district to preside at all village elections therein, until their successors are appointed. Such inspectors shall not both be chosen from the same political party. The board may also appoint for each district a poll clerk and a ballot clerk. If a proposition for the registration of voters has been adopted in any village pursuant to section fifty-one-a of this chapter, the president of the village shall, annually, at least twenty days before the annual election, appoint four inspectors of election for such village, or if the village constitutes more than one election district, four inspectors of election for each election district, to preside at all village elections until their successors are appointed. Such appointments shall be made from lists prepared, certified and filed with the village clerk by the two political parties entitled under the election law to representation on a board of election officers, if any such lists shall have been filed as hereinafter provided. The village committee of the party casting the highest number of votes and the village committee of the party casting the next highest number of votes at the last preceding general election may each prepare a list containing the names of at least two persons qualified to serve as inspectors of election, for each election district in such village, which list shall be certified by the chairman of such committee, and filed with the village clerk. From each of the two lists so filed, if filed, the president of the village shall appoint two persons who possess the qualifications prescribed by law for election officers. If in any village more than one such list be submitted on behalf or in the name of the same political party, only that list can be accepted which is certified by the proper officer or officers of the faction of such party which was recognized as regular by the last preceding state convention of such party; or if no such convention was held during the year, by the proper officer or officers of the faction of such party, which at the time of the filing of such list is recognized as regular by the state committee of such party. From

the additional names, if any, contained on the list so filed, of persons qualified to serve as such, the president of the village shall appoint inspectors of election in case of resignation, declination or other incapacity of persons appointed to such office. If such lists contain no additional names of such persons, the president of the village shall fill vacancies by appointing persons known, or proved to his satisfaction, to be members of the same political party in which such vacancy occurred.

Deviation. Former Village Laws (L. 1897, Ch. 414), sec. 54, as amended by L. 1903, Ch. 313 and L. 1904, Ch. 100; originally revised from L. 1870, Ch. 291, tit. 2, sec. 16.

Amended by L. 1910, Ch. 423, in effect June 8, 1910.

That both inspectors were of same political party will not invalidate an election held and decided for the issuance of bonds. *Ward v. Kropf*, 120 N. Y. Supp. 476 (1910).

§ 51-a. Registration of voters.

A village may adopt, at an annual or special election in the manner provided in this chapter for the submission of propositions, a proposition for the registration of voters at elections in such village as provided by this section, and thereafter the provisions of section one hundred and sixty-one of the election law that no registration shall be required for village elections shall not apply to such village. If such proposition be adopted the inspectors of election of each election district of such village shall meet on the tenth day preceding each election in such village at the place in such election district where the election is to be held, and at such hours as the board of trustees or such members thereof as are in office, shall by resolution adopted at least twenty days before every registration day designate, which shall include at least four consecutive hours between sunrise and eight o'clock in the evening, for the purpose of preparing a register for such election, which shall, so far as practicable, be in the same form as the register of voters in such election district for the last preceding general election. The town clerk of the town shall, upon application, deliver to such inspectors the register of the last preceding general election in any election district in which such election district is wholly or partly situated. Such inspectors shall, for the annual village election, prepare a register for their election district by copying from the town register the names of all persons qualified to vote at such election in such district which appear upon the register of voters for the last preceding general election in such election district, except the names of such voters as are proven to the satisfaction of such in-

spectors to have ceased to be voters in such district since their names were placed upon such register, and shall add to such register the names of all persons known or proven to the satisfaction of such inspectors to be then or thereafter entitled to vote at the election for which such registration is made. Such inspectors shall in like manner prepare a register for each special election in such village, except that the register for the annual election in such village shall be used by them as the basis therefor. All the provisions of the election law in relation to the registration of voters shall, so far as practicable, apply to the registration provided for by this section. The village clerk shall furnish the necessary blank books and blanks at the expense of the village. Elections in such villages shall be conducted in the manner provided by this chapter and the election law, except that no person shall be entitled to vote thereat whose name does not appear upon the register of the election district in which he claims to be entitled to vote.

Derivation. Added by L. 1910, Ch. 423. Amended by L. 1911, Ch. 427.

Women otherwise entitled to vote on propositions at special village elections are not required to register. Rept. of Atty.-Gen., March 8, 1911.

§ 52. Annual election.

An annual election shall be held in each village on the third Tuesday in March, unless a town meeting of a town in which any part of the village is situated, or a general election, shall be held on such day, in which case the annual election shall be held upon the next day thereafter. All other village elections are special elections. A village of the second, third or fourth class may by the adoption at an annual or special election of a proposition therefor, hold its annual election on the third Tuesday in June, unless a town meeting of a town in which any part of the village is situated, or a general election, shall be held on such day, in which case the annual election shall be held upon the next day thereafter. A special election for the adoption of such a proposition may be held at any time. The official year in such village shall begin at noon on the first Monday after the said election. All villages which have heretofore by resolution duly adopted, designated any other Tuesday in June for their annual election shall hereafter hold such annual election on the third Tuesday of June except as above stated. The board of trustees or such members thereof as are in office shall by resolution, adopted at

least ten days before every village election, designate the hours of opening and closing the polls thereof, which shall include at least four consecutive hours between sunrise and eight o'clock in the evening. The resolution shall also designate the place of holding the election, or if there is more than one election district in the village, the place of holding the election in each district. The board or such members thereof as are in office also shall, at least ten days before the election, cause notice thereof to be published at least once in the official paper, if such paper is published in the village, and a printed copy thereof conspicuously posted in at least six public places in the village specifying the time and place or places, of holding the election, the hours of opening and closing the polls thereof, the offices, if any, and the term to be filled, and setting forth in full all propositions to be voted upon. If the board or such members thereof as are in office neglects to appoint the place or places for the annual election, the election shall be held at the place or places of the last preceding annual election, and if it neglects to appoint the hours of opening and closing the polls thereof, such hours shall be the same as at the last preceding annual election. An annual election of the village officers shall not be invalid because of a failure to give such notice. A vote upon a proposition shall be void unless due notice of the election has been given. If a village, constituting a single election district, is divided into wards and elects trustees by wards, separate ballot boxes shall be provided for each ward, and the ballots of the electors residing therein shall be deposited in the ballot box designated for such ward.

Derivation. Former Village Laws (L. 1897, Ch. 414, sec. 55, as amended by L. 1894, Ch. 100 and 231; L. 1905, Ch. 290, and L. 1908, Ch. 100; originally revised from L. 1870, Ch. 291, tit. 2, sec. 15, as amended by L. 1888, Ch. 172, tit. 8, sec. 25.

Amended by L. 1909, Ch. 472, in effect March 1, 1910.

Cross references. Official ballots, Election Law, secs. 318, 319; ballot machines, use of Election Law, secs. 390-421; election expenses, Penal Code, sec. 776; informalities, legalization by board of supervisors, County Law, sec. 15; special election, when not held on date fixed, see post, sec. 55; for full treatment, see Jewett's Election Manual (17th Ed.); nomination of officers, Election Law, secs. 120, 126; when filed, Election Law, sec. 128; must be posted, Election Law, sec. 132; declination, Election Law, sec. 133.

Opening and closing polls at a village election is governed by this section. Rept. of Atty.-Gen. (1896), 93.

Unofficial ballots cannot be counted by inspectors. If they do so mandamus will issue to compel them to reconvene, return the unofficial ballots, correct the statement of the results of the canvass and make a proper certificate of the result. *People ex rel. March v. Beam*, 117 App. Div. 374, 103 N. Y. Supp. 818.

It is the duty of the village clerk to provide official ballots for this election. (Laws 1896, Ch. 909, sec. 80, as amended by Laws 1897, Ch. 609, sec. 86, as amended by Laws 1905, Ch. 643.) *People v. Beam*, 117 App. Div. 374 (1907), 103 N. Y. Supp. 818; see *Jewett's Manual*, sec. 341, p. 172.

Special laws. This section applies to villages incorporated under L. 1870, Ch. 290, but having a special act fixing the date of annual elections. *People ex rel. Canning v. Shaw*, 25 App. Div. 147, 49 N. Y. Supp. 127.

Failure of village trustees to post the six notices of an election at least ten days prior thereto, renders the election void, although the notice was published and also posted four days prior to the election. (Opinion of Atty.-Genl., June 29, 1916), 8 State Dept. Rep. 516.

§ 53. Canvass of annual election.

The inspectors of election of each election district shall, immediately upon the closing of the polls of each annual election, proceed to canvass the votes cast thereat, and shall complete such canvass without adjournment. They shall, before nine o'clock in the forenoon of the following day, file with the village clerk their certificate setting forth the holding of the election, the total number of votes cast for each office, the number of votes cast for each person for such office, the total number of votes cast upon each proposition voted upon, and the number cast for and against it. If the village contains more than one election district, the board of trustees of such village shall meet at its usual place of meeting, at nine o'clock in the forenoon of the next day after the election. The village clerk shall produce at such meeting the returns of the inspectors of election, and the board of trustees shall canvass such returns, and file in the office of the village clerk a certificate declaring the result. The person eligible and receiving the highest number of votes for an office shall be elected thereto. If two or more persons receive an equal and the greatest number of votes for the same office, the board of trustees shall determine by lot which of them shall be deemed elected.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 56; originally revised from L. 1870, Ch. 291, tit. 1, sec. 20; tit. 2, sec. 17; tit. 3, sec. 3.

Cross references. Certificate of canvass, see post, Form 18.

Revisers' note (1897). This section provides for a canvass of the vote by the board of trustees in case the village election is held in election districts. There is no provision for holding such canvass under the act of 1870. In the last sentence of this section the revision commission followed the scheme provided by section 20, of title I, of the act of 1870, which provides that if a tie results as to a particular office, the person presiding at the election shall determine by lot which shall be deemed elected to the

office. This provision, notwithstanding the fact of having been in existence since 1870, is of doubtful constitutionality under article X, section 2, of the Constitution, which provides that "all city, town, or village officers whose election or appointment is not provided for by this Constitution shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose."

Constitutionality.—Provision for the selection of a village officer by the board of trustees by lot in case of tie vote does not violate section 2 of article X of the State Constitution. *Matter of Frame* (1910), 69 Misc. 568.

Choice by lot in case of tie vote. See *Matter of Frame* (1910), 69 Misc. 568. See generally, *People ex rel. Miller v. Mynderse* (1910), 140 App. Div. 789, 123 N. Y. Supp. 523, *affd.* 201 N. Y. 14.

§ 54. Failure to designate terms.

No election of village officers, heretofore or hereafter held in any village, shall be invalid on account of the failure of the electors to designate in their ballots the respective terms of office of persons to be elected thereat, for the same office, for different terms; but the persons so to be elected to such office, who are eligible and receive the highest number of votes, shall be elected. The person first named on a ballot, containing the names of more than one person for such an office, and not designating their respective terms, shall be deemed designated for the longest term, the second, for the next longest term, and so on to the end; and the inspectors of election shall count the ballots and certify the result accordingly. If the votes shall not be so counted and canvassed the board of trustees shall, at least twenty days before the expiration of the shortest term, determine by lot which of such officers shall hold office for each term, and thereupon such officers shall be deemed to have been elected accordingly.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 57; originally revised from L. 1881, Ch. 17, sec. 1, and former acts to same effect.

Revisers' note (1897). It is doubtful whether this section has much force, as official ballots are now required at all elections of village officers.

§ 55. Special elections of officers.

Whenever the day fixed by law for an annual election shall have passed, and no election shall have been held thereon, the board of trustees shall, forthwith, give notice of a special election, to be held at the place of the omitted annual election. Such notice shall be given in like manner as a notice of an annual election, and a special election shall be held in the same manner as, for the purpose of, an annual election. For the purpose of determining the terms of office of the officers elected thereat, the time therefrom to the beginning of the next official year shall be deemed one year. Whenever vacancies shall occur in the board

of trustees so that a majority of the members thereof are not in office, the members of such board as are in office shall forthwith cause a special election to be held for the purpose of filling such vacancies. Such special election shall be held in the same manner as an annual election, and notice thereof shall be given by the members of such board as are in office in like manner as for an annual election. If the offices of all the trustees and the president are vacant, the clerk shall cause such special election to be held and shall give notice thereof as above provided. If the office of clerk is also vacant, a special election to fill such vacancies shall be held upon the call of at least twenty-five taxpayers residing in such village, who shall sign a notice therefor stating the time and place where such special election shall be held, and at least ten days before such date so named cause the same or copies thereof to be posted in six or more conspicuous places in such village and to be published in a newspaper published in said village if there be one. The officers elected at such special election shall immediately enter upon the duties of their offices and shall hold such offices for the unexpired terms of their predecessors. A special election under this section shall not be held during the months of February and March.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 58, as amended by L. 1904, Ch. 100; originally revised from L. 1868, Ch. 462, secs. 1, 2.

Cross references. Notice of election, see Ante, sec. 52; notice of special election of officers, see post, Form 19.

Revisers' note (1897). No substantial change is made by this section of the revision. The act of 1868 provides expressly for the place of posting the notices, "on the outer door of each place of public religious meeting, etc." This section of the revision requires the notice to be given in the same manner as for the annual election.

Provision for special election of trustees where vacancy occurs, is mandatory and may be compelled by mandamus. *People v. Board of Trustees*, 71 Hun, 188 (1893).

§ 56. Submission of propositions; special election.

The board of trustees may, upon its own motion, and shall, upon the petition of twenty-five electors qualified to vote upon a proposition, cause to be submitted at a village election a proposition upon any question which may be lawfully decided thereat. A separate board of fire, water, light, sewer, cemetery or other

commissioners may present to the board of trustees a petition, requesting the submission of a specified proposition, relating to its department, at a village election. Upon the presentation of such petition, the board of trustees shall cause the proposition to be submitted accordingly. If a petition under this section be presented after the annual election and before the first day of January following, a special election shall be called, to be held not less than ten nor more than twenty days after the presentation of such petition. If a petition be presented at any other time, and more than ten days prior to the annual election, the proposition shall be submitted at such annual election. Except for the purpose of fixing or changing the number of trustees, or for the purpose of determining whether an officer shall be thereafter elected or appointed, or the submission of a proposition to pay the additional expense of a state or county highway through the village, no special election shall be held in the months of February or March. The foregoing provisions in this section contained in respect to the time of presentation of a petition under this section and prohibiting a special election in February or March, shall not apply to villages which hold their annual election in June, but in such a village the board of trustees may, upon its own motion, submit a proposition at a special village election in April, and if such a petition be presented after the annual election, and before the first day of April following, a special election shall be called in the manner hereinbefore provided; but if a petition be presented at any other time and more than ten days prior to the annual election, the proposition shall be submitted at such annual election. Except for the purpose of fixing or changing the number of trustees, or for the purpose of determining whether an officer shall be thereafter elected or appointed, or the submission of a proposition to pay the additional expense of a state or county highway, no special election shall be held in such a village in the month of May or June. Notice of a special election for the submission of a proposition shall be given in the same manner as for an annual election. Such special election shall be held by the same officers, and conducted and the result canvassed in the same manner as an annual election.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 59, as amended by L. 1906, Ch. 57.

Amended by L. 1910, Ch. 4, in effect Feb. 4, 1910.

Cross references. Form of ballot (Election Law, sec. 332; proposition which may be submitted in February and March, see ante, secs. 45, 47, 50; forms for submission of proposition, see post, Forms 20, 21, 22, 23.

Revisers' note (1897). The form of the ballot is prescribed by section 331 of the Election Law. The Election Law requires official ballots at all elections at which public officers are to be elected, except school officers in school districts, cities or villages. See Election Law, § 330; Jewett's Election Manual.

§ 56-a. Defeated propositions not to be submitted for one year.

Any proposition submitted in pursuance of section fifty-six of this chapter and which has been defeated by a vote of the electors shall not again be submitted to such electors until after the expiration of one year, or until the next annual village election.

Added by L. 1917, Ch. 541, in effect May 17, 1917.

§ 57. Votes upon propositions to be by ballot.

All votes upon a proposition submitted at a village election shall be by ballot; and, unless otherwise provided, the provisions of the election law, relating to ballots, apply to propositions submitted, under this chapter.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 60.

Cross references. Form of ballot for questions submitted, Election Law, sec. 332; Jewett's Election Manual.

Manner of submitting different propositions. See Rept. of Atty.-Gen. (1902), 263; see *Everett v. Village of Potsdam*, 112 App. Div. 727 (1906), 98 N. Y. Supp. 963.

Proposition stating more than one question is not violative of the election Law, where the ballots merely give the village officers a discretion which they would otherwise have. *Everett v. Village of Potsdam*, 112 App. Div. 727 (1906), 98 N. Y. Supp. 963.

In proposition for sewer construction it is not necessary that every detail of the plan should be separately stated and numbered. *Mead v. Turner*, 119 N. Y. Supp. 526 (1909).

Provisions of election law relating to ballots apply to propositions submitted at a special election. See *Mead v. Turner*, 119 N. Y. Supp. 526 (1909).

§ 58. Official undertakings.

The treasurer, collector, police justice, street commissioner, and such other officers as may be required by the board of trustees, shall, before they enter upon the duties of their respective offices, each execute to the village and file with the village clerk, an official undertaking in such sum and with such sureties as the board of trustees shall direct and approve. The board of trustees may at any time require any such officer to file a new official undertaking for such sum and with such sureties as the board shall approve.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 61; originally revised from L. 1870, Ch. 291, tit. 2, sec. 11; L. 1875, Ch. 181, sec. 3, as amended by L. 1894, Ch. 318; Code Crim. Pro., sec. 76.

Cross references. Official undertakings generally, see Public Officers Law, secs. 11, 12, 13, 15; failure to file creates vacancy, see Public Officers Law, sec. 30; undertaking equivalent to bond, see General Construction Law, sec. 14; officers before whom taken, see General Construction Law, sec. 11; acting without filing a misdemeanor, see Penal Law, sec. 1820; but official acts are valid, see Penal Law, sec. 1821; form of official undertaking, see post, Form 24.

Resolution of Village Board appointing a street commissioner is sufficient authority to act, when oath of office is taken and bond given as required by law. *Cotanch v. Grover*, 57 Hun, 272 (1890).

Bond should run to village in its corporate name, but the bond reciting the election of a named person as collector of the village and binding the obligors to pay "to the trustees or their successors" is valid as a bond to the village. *Village of Warren v. Phillips*, 30 Barb. 646 (1860).

Failure of Water Commissioner to file bond before any official act was done, does not impair their authority to take proceedings for holding an election to determine the question of taxation for water supply. Until after election there is no certainty that the system will be created, and it is impossible to fix the penalty of the bond, which depends upon the amount of taxes voted and the cost of the plant. *Village of Champlain v. McCrea*, 165 N. Y. 264 (1901 rev'g 33 App. Div. 259).

Liability of treasurer for funds deposited. Where the treasurer of a village who was an employee of the bank where the village funds were on deposit, upon the election of his successor in office who was also the teller of the same bank, directed the transfer of the village funds to, and they were thereafter carried on, the bank's books in the name of the new treasurer, but the former treasurer gave no check for the amount, the new treasurer, who with knowledge of the facts acquiesced in the transfer and paid village orders drawn on the funds treating them as checks, was liable to the village for the loss of the balance standing to his credit when the bank became insolvent, the trustees of the village having designated no depository for the funds. *Trustees of Village of Bath v. McBride*, 81 Misc. 618.

Liability on treasurer's bond. Where the form of a village treasurer's bond differs from that prescribed by statute, the liability of the sureties is measured by the statute and not by the language of the obligation itself. *Trustees of Village of Bath v. McBride*, 81 Misc. 618.

§ 59. Notice to person chosen to a village office.

The clerk of the village shall, within three days after the election or appointment of a village officer, except the first election or appointment after the incorporation of the village, notify each person elected or appointed of his election or appointment and of the date thereof, and that he is required to file his oath of office with such clerk, before entering upon the duties thereof, and, if an official undertaking be required of him, by or in pursuance of law, that he is also required to file the same with such clerk, and that upon his failure so to do, he will be deemed to have declined the office. If an undertaking is required of a village officer, by or in pursuance of law, after entering upon the duties of his office, the clerk of the village shall thereupon serve upon such officer personally, a written notice that he is required to file such undertaking with the clerk, within ten days after the service of the notice, and that upon his failure to do so, his office will become vacant.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 62; originally revised from L. 1870, Ch. 291, tit. 2, secs. 6, 7, 12, as amended by L. 1887, Ch. 68, tit. 3, sec. 20, as added by L. 1871, Ch. 688, L. 1875, Ch. 181, sec. 2, as amended by L. 1891, Ch. 74, sec. 3, as amended by L. 1894, Ch. 318, Code Crim. Pro., sec. 76, Const. Art. 13, sec. 1.

Cross references. Form of oath, see Const. Art. 13, sec. 1; before whom taken, see Gen'l. Const. Law, secs. 10, 11; official oaths, see Public Officers Law, sec. 10; failure to file, see Public Officers Law, secs. 18, 30; acting without taking, see Penal Law, secs. 1820, 1821; oath of office, see post, Form 25, notice to person chosen to fill office, see post, Form 26.

Member of board of health is an officer whose oath is required to be filed. Matter of Board of Health, 43 App. Div. 236 (1899), 60 N. Y. Supp. 27.

Defective oath or bond affords ground of forfeiture of office and does not create vacancy. People v. Watts, 73 Hun, 404 (1893).

Form of oath must comply with constitution, and any material omission will invalidate unless waived. Matter of Gilroy, 85 Hun, 424 (1895).

§ 60. Resignations and removals.

A village officer may resign to the board of trustees, and his resignation shall take effect upon the delivery thereof to the village clerk, unless a time be specified in such resignation for its taking effect thereafter, in which case, such resignation shall take effect at the time so specified.

In addition to the method provided by the public officers law, an officer, except a president or a trustee, appointed by the board of trustees of the village, may be removed by the board for misconduct, on notice to such officer and an opportunity given him to make his defense.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 63; originally revised from L. 1870, Ch. 291, tit. 2, sec. 14; tit. 3, sec. 23.

Cross references. Removal of village officer, see Public Officers Law, sec. 36; resignation of village officer, see post, Form 27.

§ 61. Filling of vacancies.

Vacancies occurring otherwise than by expiration of term in a village office, other than that of health officer, shall be filled by the board of trustees, if the office be elective, until the end of the current official year, but if the office be appointive, for the balance of the unexpired term. If a vacancy in an elective office occurs within less than ten days prior to an annual election, and such office is not to be filled at such election, the appointment shall be for a term which will expire at the end of the next official year.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 64; originally revised from L. 1870, Ch. 291, tit. 2, sec. 10; tit. 3, sec. 18, as added by L. 1871, Ch. 688; L. 1871, Ch. 696, sec. 1; L. 1875, Ch. 181, sec. 2, as amended by L. 1891, Ch. 74; L. 1889, Ch. 375, sec. 2, as amended by L. 1891, Ch. 306.

Cross references. What created vacancy, see Public Officers Law, sec. 30; forfeiture, see Penal Law, secs. 510, 511; appointment to fill vacancies, see post, Form 28.

Failure to elect successor of a health officer of a village does not create a vacancy in the office, and a county judge has no right to fill it. *People v. Scott*, 31 Misc. 131 (1900), 64 N. Y. Supp. 970.

Distinction between vacancies *ipso facto* and forfeitures requiring a direct proceeding for the purpose. See *Brooks v. Watts*, 73 Hun, 404 (1893).

In case town officer holding over by reason of a failure to elect his successor, a person to fill the office is to be elected at the next town meeting. *People v. Randall*, 12 Misc. 619 (1895), 34 N. Y. Supp. 450.

Filling vacancy where office of police justice abolished, was justified where the incumbent resigned his office before his time expired and where the village had previously determined that such office should be abolished only after the expiration of the term of such present incumbent. *People ex rel. Hoban v. Bates* (1913), 81 Misc. 12.

Village trustee vacancy occurring ten days before election should be filled by the board of trustees and not by governor. Opinion of Atty.-Gen., March 22, 1913.

§ 62. Refusal of officer to surrender his office.

If a person who has been an officer of a village refuses or neglects to deliver to his successor in office, within ten days after notification and request, all the moneys, books, papers, records, property and effects of every description, which have come into his possession or under his control, by virtue of his office, and belonging to the village or appertaining to the office, he shall forfeit and pay to the village, the sum of twenty-five dollars for each and every day he shall so neglect or refuse, and also all damages, costs and expenses caused by such neglect or refusal.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 65; originally revised from L. 1870, Ch. 291, tit. 8, sec. 15, without change of substance.

Cross references. Refusal to surrender to successor, see Penal Law, sec. 1836; compelling delivery of books, etc., see Public Officers Law, sec. 80; Code Civ. Pro., § 2471-a.

Action in nature of quo warranto lies to test right to office. *People v. Willard*, 44 Hun, 580 (1887).

§ 63. Separate boards of commissioners.

A village which has no separate board of fire, water, light, sewer, park or cemetery commissioners, by adopting a proposition therefor at an annual election, may establish such a board, or may establish a municipal board, with the powers, duties and responsibilities of two or more of such separate boards. In a village of the first class a board of commissioners or a municipal board may be composed of three or five members as shall be determined by the proposition. If such proposition be adopted, the board of trustees at its next annual meeting shall appoint such commissioners, for the terms of one, two and three years, respectively, or in a village which determines to have five commissioners, for the terms of one, two, three, four and five years, respectively; and at each annual meeting thereafter the board of trustees shall appoint one commissioner for the full term of three or five years, as the case may be. A village of the first class, by the adoption of a proposition therefor, at an annual election, may establish a separate board of police commissioners, composed of three members. If the proposition to establish such board be adopted, the board of trustees, at its next annual meeting, shall appoint such commissioners for the terms of one, two and three years respectively; and at each annual meeting thereafter the board of trustees shall appoint one commissioner for the full term of three years. Said board of police commissioners shall have all the powers, be subject to all the liabilities and perform all the duties of the president and board of trustees as far as the same relate to the police or police department.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 66; originally revised from L. 1871, Ch. 696, tit. 1; L. 1875, Ch. 181, sec. 1; L. 1889, Ch. 375, sec. 2, as amended by L. 1891, Ch. 680, sec. 1; amended by L. 1909, Ch. 469; L. 1913, Ch. 53. In effect March 6, 1913.

Cross references. Continuance of existing boards, see post, sec. 65; power of board of trustees, etc., see post, sec. 89, subd. 19; eligibility of commissioners, see ante, sec. 42.

Revisers' note (1897). The present law authorizes the organization of the board of trustees as a board of water commissioners or the separate election of three water commissioners. The water commissioners are required to act also as light commissioners. Five sewer commissioners, and not less than five nor more than nine cemetery commissioners may be appointed by the board of trustees. The revision requires the board of trustees to act as fire, water, light, sewer and cemetery commissioners in the first instance, and confers upon it, primarily, all the powers which, by this chapter, are conferred upon any such board. See § 88, subd. 19. The electors may, however, adopt a proposition establishing a separate board of fire, water, light, sewer or cemetery commissioners. If such proposition is adopted, a board of three or five commissioners is appointed by the board of trustees. Any such commissioners now in office are continued until the expiration of their terms, and no new commissioners are to be appointed until the number of such commissioners in office is reduced by expiration of term to less than three or five, as the case may be. See § 68. The commissioners so appointed are required to have the same qualifications as members of the board of trustees.

§ 64. Municipal boards; consolidation.

Upon the adoption of a proposition therefor a village may establish a municipal board, consisting of three or five members, possessing all the powers and subject to all the responsibilities of two or more of the boards named in this article. The members of such municipal board shall be appointed by the board of trustees for the terms of one, two and three years, respectively, if the board consists of three members; and for the terms of one, two, three, four and five years, respectively, if the board consists of five members. Upon the filing of the certificate of the adoption of such proposition, all the powers, duties and responsibilities of such separate boards are transferred to the municipal board, and all property, records, books and papers in the possession of such separate boards shall, within fifteen days after such consolidation, be delivered to the municipal board. If the village has only one of the boards provided in this article, the powers and responsibilities of one or more other boards, named therein, may be conferred upon such existing board by the adoption of a proposition therefor at an annual election, and thereupon such

existing board shall possess all the powers and responsibilities of such other board or commission consolidated with it, and shall thereafter be known as the municipal board of the village. If on March the fifteenth, nineteen hundred and five, a village had a municipal board consisting of three members, a proposition for establishing therein a municipal board to consist of five members may be adopted, and thereupon the board of trustees shall appoint the two additional members of such board for such terms that the term of one member of such board will expire each year.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 67, as amended by L. 1905, Ch. 66.

A municipal commission appointed under this section has no authority to withdraw surplus funds from the village treasury for deposit or investment in interest bearing accounts. (*Opinion of State Comptroller, June 29, 1916*), 9 State Dept. Rep. 504.

§ 65. Continuance of separate boards.

If a village now has a separate board of fire, water, light, sewer or cemetery commissioners, such commissioners shall continue in office during their respective terms, and no commissioners shall be hereafter appointed until the whole number be reduced by expiration of term or otherwise to less than three, except that in a village of the third class the commissioner or commissioners last appointed shall cease to be a commissioner from and after the passage of this act, until the number be reduced to three, except that if a village of the first or second class now has a board of commissioners composed of five members, such number shall be continued. All such commissioners shall hereafter be appointed by the board of trustees; and the terms shall be so adjusted that one shall expire each official year.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 68, as amended by L. 1898, Ch. 668.

This section was new in former Village Law.

§ 66. Continuance of municipal board.

A municipal board or commission heretofore created and existing in a village under a general law when this chapter takes effect is continued, and one member of such board or commission shall be appointed by the board of trustees each year for a full term, as provided by the law relating to such board or commission in force on the day next preceding the day when this chapter takes effect, and such terms are hereby established as the terms for the members of such board or commission under this chapter.

Such municipal board or commission so continued shall possess all the powers and responsibilities and be subject to all the duties and liabilities herein conferred or imposed upon the several separate boards named in this article, except boards of cemetery commissioners.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 69.

This section was new in former Village Law.

Village Board of Health is a municipal board. Rept. of Atty.-Gen. (1898), 202.

§ 67. Abolition of separate or municipal boards.

A separate board of fire, water, light, sewer or cemetery commissioners, or a municipal board, may be abolished by adopting a proposition therefor at an election. The abolition of such a board shall take effect immediately upon filing a certificate showing the adoption of the proposition. Within ten days after such certificate is filed, the board shall deliver to the clerk of the village its records, books and papers; and shall also within the same time deliver to the treasurer all funds, and to the president all other property in its possession or under its control, belonging to the department.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 70.

This section was new in former Village Law.

Editor's note. Upon the abolition of a separate or municipal board, the board of trustees reassumes all the powers and duties of such board, as prescribed by this chapter.

§ 68. Books and papers to be open to inspection.

All books, papers and records relating to village affairs kept by any board or officer shall be open to inspection at all reasonable hours by every inhabitant of the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 71; originally revised from L. 1870, Ch. 291, tit. 5, sec. 2, as amended by L. 1891, Ch. 160, in part, extended to all village officers.

Under former law a private or personal interest must be shown in order to warrant inspection. *People v. Cornell*, 35 How. Pr. 31 (1868).

The force of this decision is probably superseded by section 68.

ARTICLE 3-A.¹

RECEIVER OF TAXES IN CERTAIN VILLAGES.

Section 70. Office created; term of office; compensation.

- 71. Powers and duties of receiver.
- 72. Office hours.
- 73. Election; term of office; salary; bond; oath of office.
- 74. Warrant for collection of taxes.
- 75. Certain offices abolished.

§ 70. Office created; term of office; compensation.

In each village adjoining a city of the first class, situated within a county having a population of four hundred thousand or upwards, according to the last state enumeration, except in counties adjoining a city of over one million inhabitants, there shall be a receiver of taxes and assessments. The term of office of such receiver of taxes and assessments shall be four years. Such office shall be filled by the electors of the village, in the same manner as other elective offices of the village, at the times hereinafter provided. The salary shall be fixed by the board of trustees of such village.

Added by L. 1916, Ch. 555, in effect Jan. 1, 1917.

§ 71. Powers and duties of receiver.

The receiver of taxes and assessments shall be a resident of such village, and shall hold no other public office except the receiver of taxes and assessments of the town in which such village is located in counties having a city of more than four hundred thousand and less than one million, and shall have and possess and shall exercise in the manner and within the time prescribed by law all the rights, powers, authority and jurisdiction possessed and exercised by either the collector of taxes or the treasurer of such village, and shall be subject to all of the duties of each of said officers. It shall be the duty of such receiver to receive and collect all village taxes and assessments that may be levied in such village, including water rates, license moneys, and all other moneys provided by law to be paid to the treasurer or collector of such village, or to the village trustees. All fees collected

¹ Article added by L. 1916, Ch. 555, in effect Jan. 1, 1917.

by him upon village taxes or assessments heretofore paid to the collector or to the treasurer shall belong to the village and shall be paid into the general village fund. Such receiver shall enter daily in a suitable book or books the sum of money received daily, the names of the persons from whom received, and the particular tax or assessment, subject or department for which such sums were paid, and the interest, penalty or fee, if any, paid thereon, and such book or books shall be public records and shall be open during office hours to public inspection to any taxpayer in such village. Within twenty-four hours after receiving the same he shall deposit all sums of money received by him belonging to the village in such bank or banks as may be designated from time to time by the trustees of such village. All moneys deposited by him so belonging to such village shall be paid out and disbursed by him on his check as such receiver upon proper order of the trustees.

Added by L. 1916, Ch. 555 and amended by L. 1917, Ch. 20, in effect Feb. 26, 1917.

§ 72. Office hours.

Such receiver shall keep his office in said village, and such office shall be open each and every day, Sundays and all public holidays excepted, from nine o'clock in the morning until four o'clock in the afternoon.

Added by L. 1916, Ch. 555, in effect Jan. 1, 1917.

§ 73. Election; term of office; salary; bond; oath of office.

The receiver of taxes and assessments shall be elected for a full term at the next regular election of village officers occurring after this article takes effect and at such election in every fourth year thereafter; and also at the regular election of village officers in any year for an unexpired term to fill a vacancy occurring more than thirty days before such election. The full term of office of such receiver shall begin, or a receiver elected to fill a vacancy shall take office, on the first Monday succeeding his election, and such term shall end at the close of the day preceding the Monday following the election at which his successor is required to be chosen. The salary of such receiver shall be raised and collected by tax as other village charges

are raised and collected. In the event of a vacancy in such office by death, resignation or other cause, the board of trustees shall fill the same, at a regular or special meeting called for that purpose, by an appointment expiring at the close of the day preceding the first Monday following the next regular election of village officers at which the office may be filled by election as hereinbefore provided; but nothing contained in this article or any other statute shall authorize an appointment by the board of trustees to fill a vacancy in such office before the first Monday following the regular election of village officers first occurring after this article takes effect. Such board of trustees may at any regular or special meeting fix the amount of the bond to be given by such receiver, and such bond shall be subject to approval as to form and sufficiency of surety by such board. Such bond shall be conditioned on the faithful discharge of the duties of such receiver of taxes and assessments and shall be filed in the office of the village clerk. Such receiver after having been elected or appointed and before entering upon the discharge of the duties of his office shall take and subscribe and file in the office of the village clerk the constitutional oath of office.

Added by L. 1916, Ch. 555, in effect Jan. 1, 1917.

§ 74. Warrant for collection of taxes.

The board of trustees of such village shall issue warrants or authorizations to such receiver for the collection of all taxes and assessments imposed, levied or assessed by them in such village and for the collection of all moneys due or to become due to them as trustees of such village, and all other warrants or authorizations for the collection of taxes, assessments, or other moneys which, were it not for the provisions of this article, would be issued to some other officer, shall be issued to the receiver of taxes and assessments.

Added by L. 1916, Ch. 555, in effect Jan. 1, 1917.

§ 75. Certain offices abolished.

The offices of collector and treasurer of such village are abolished from and after the beginning of the term of office of the first receiver of taxes under this article, and no collector nor treasurer shall be chosen at any time to succeed the collector or treasurer in office when the term of such receiver begins. Upon the taking of office by the first receiver of taxes and assessments, as provided by this article, the collector of the village and the treasurer of the village shall surrender up and deliver to said receiver all assessment rolls, books, papers, writings and all other documents in his possession as such officer. All provisions of law applicable to village collectors or treasurers and

not inconsistent with this act, are hereby made applicable to the office of receiver of taxes and assessments and such receiver shall continue to collect all fees and penalties which such collector or treasurer would collect were it not for this article.

Added by L. 1916, Ch. 555, in effect Jan. 1, 1917.

ARTICLE IV.

POWERS, DUTIES AND COMPENSATION OF OFFICERS.

- Section 80. President.
 81. Treasurer.
 82. Clerk.
 83. Franchises; filing; duty of clerk.
 84. Street commissioner.
 85. Board of health.
 86. Compensation and duties of village officers not otherwise prescribed.
 87. Meetings of the board of trustees.
 88. Presiding officer and rules of proceedings.
 89. General powers of the board of trustees.
 90. Village ordinances.
 90a. Building and sanitary codes.
 91. Licensing occupations.
 92. Definition of village ordinances.
 93. Violation of ordinances.
 94. Approval by board of trustees of ordinances of separate board.
 95. When ordinances to take effect.

§ 80. President.

The president of a village is its executive officer and the head of its police force. It is his duty to see that the provisions of this chapter, and the resolutions and ordinances of the local board of trustees, are enforced, to cause all offenses created thereby to be prosecuted, to institute civil actions in the corporate name of the village for penalties recoverable by the village, to exercise supervision over the conduct of the police and other subordinate officers of the village, and to recommend to the board of trustees such measures as he may think necessary. If the president be absent or unable to perform the duties of his office, the trustees shall appoint one of their number to act as president, who, during the absence or inability of the president, is vested with all the powers and may perform all the duties of the president. If he be the president of a village incorporated prior to July eighteenth, nineteen hundred and seven, he shall cause to be prepared an outline map and description of the corporate limits of such village, which map shall be drawn or traced in black India ink on tracing cloth, which map and description shall be certified by him as true and correct, and transmitted to, and filed by the secretary of state as a record of his office. Within sixty days after this act becomes a law it shall be the duty of the secretary of state to notify the president of each of the villages herein designated to file with him within sixty days after such notification such map and description as herein required. The cost of preparing such outline map and description shall be a proper charge in the maintenance of the government of the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 80; originally revised from L. 1870, Ch. 291, tit. 5, sec. 1; L. 1870, Ch. 291, tit. 8, sec. 6. Amended by L. 1911, Ch. 205.

Cross references. President presides over board, see post, sec. 88; issues licenses, see post, sec. 91; sign bonds, see post, sec. 129; has charge of property purchased, etc., see post, sec. 124; may act as policeman, see post, sec. 188.

See Bender's Health Officers' Manual, also Joyce on Nuisance.

Revisers' note (1897). The requirement that the president shall cause all offenses to be prosecuted and civil actions instituted in the corporate name of the village is new as an express statutory provision, but it is doubtless implied in the original law.

Laws 1870, chapter 291, title VIII, section 6, provides that all actions, etc., shall be in the corporate name of the village.

Charter amendment providing that president shall appoint the sewer, water and street commissioners is not invalid as depriving the people of the right of local self-government. *Scott v. Village of Saratoga Springs*, 115 N. Y. Supp. 796 (1909).

Where president employs surveyor and the village accepts his services and agrees to pay therefore, it is liable to him for his fee. *Kent v. Village of North Tarrytown*, 50 App. Div. 502 (1900).

Common Council may remove president for cause, and in the absence of any statutory prohibition may do so by a majority vote. *Armatage v. Fisher*, 74 Hun, 167 (1893).

§ 81. Treasurer.

The treasurer of a village is its chief fiscal officer. He shall receive all moneys belonging to the village, and keep an accurate account of all receipts and expenditures thereof, showing the funds for which, and the persons from whom, such moneys are received, and the funds from which, and the persons to whom, such moneys are paid. He shall deposit all moneys received by him in the banks designated by the board of trustees, subject to his check, as treasurer. Interest on village money belongs to the village, and must be credited by the treasurer to the proper fund. No money shall be paid from the treasury of the village, except in pursuance of a judgment or order of a court, or an audit and allowance by the board of trustees, and an order designating the fund, signed by the president and countersigned by the clerk, or by an order of a board of commissioners of the village, upon a fund within its jurisdiction. The treasurer shall not draw any money so deposited by him, except in pursuance of such judgment or order. He shall report, in writing, to the board of trustees when requested, the amount of money received by him since his last report, the sources thereof, and the true state of the treasury, which reports shall be filed with the village clerk. He shall, within five days after the end of each year, file with the village clerk an accurate, detailed and verified statement, showing all moneys paid into the village treasury during the previous fiscal year, the persons by whom, and the funds for which, the same were paid, all expenditures from the treasury during such year, the persons to whom, and the funds from which, such moneys were paid, the balance in the treasury to the credit of each fund at the commencement and at the end of the fiscal year, and all indebtedness of the village outstanding, to whom,

so far as practicable, the same is owing, upon what account, and when payable. The treasurer shall make such further reports as may be required by the board of trustees. (Amended by L. 1918, Ch. 26, in effect March 4, 1918.)

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 81; originally revised from L. 1870, Ch. 291, tit. 5, sec. 2, as amended by L. 1891, Ch. 160.

Cross references. Fiscal year, see post, sec. 100; publication of annual report, see post, sec. 102; treasurer acts as receiver of taxes in certain villages, see post, sec. 117; misappropriations and false accounts, see Penal Law, secs. 1865, 1866; presentation of claim before action, see post, sec. 341.

Revisers' note (1897). This section expressly requires the treasurer to act as the fiscal officer of the village, and receive all moneys belonging to the village from whatever source derived. This modifies the original law, which, in certain cases, requires the board of water commissioners or other board, to receive and expend the funds belonging to that account. This section requires a separate account to be kept of the funds applicable to the particular purpose. The treasurer is required to make a report of the financial condition of the village and file the same in the office of the clerk on or before the 5th day of March in each year, the fiscal year of the village being fixed by section 100 as ending the last day of February. Under the original law, the treasurer is required to exhibit to the board of trustees, at least fifteen days before the annual election in each year, a full account of the village finances. It seems better that this report should be filed with the clerk, and open to public inspection until the day of election. It is required to be published as part of the annual financial statement. See § 102.

Chief fiscal officer is treasurer and not board of trustees. *Fisher v. Village of Cortland*, 42 Hun, 173 (1886); *Gage v. Village of Hornellsville*, 106 N. Y. 667 (1887); *Dressel v. City of Kingston*, 32 Hun, 526 (1884); but see *Mark v. Village of West Troy*, 69 Hun, 442; 23 N. Y. Supp. 422 (1893). Where charter required presentation to board of trustees.

Village treasurer is not a member of the board of trustees, and is not authorized to make contracts on behalf of the village. *Matter of Village of Kenmore*, 59 Misc. 388 (1908), 110 N. Y. Supp. 1008.

The expense of a village treasurer's report may be reduced to a minimum by eliminating therefrom all matter not required to be inserted therein pursuant to this section, and by causing it to be published but once in the official newspaper, that being the minimum number of publications required by law. (Opinion of State Comptroller, Jan. 21, 1916), 8 State Dept. Rep. 572.

Treasurer of board of water commissioners is not the proper person to present with notice of claim against the village even though the original contract was made through the board of which he is a member. *King v. Randolph*, 28 App. Div. 25 (1898), 50 N. Y. Supp. 902.

Treasurer cannot deduct personal debt from a claim he is directed to pay. *Tobin v. Kage*, 64 Hun, 531 (1892), 19 N. Y. Supp. 440.

Liability upon bond of treasurer. Where the legislature requires an officer to perform a special duty and to give a special bond for the performance of that duty, no liability may attach to the general bondsmen in the absence of a declaration that they shall be liable. But that rule does not apply where a fund is placed in the hands of a treasurer for safe keeping and disbursement without any direction that a special bond be executed for the security of that fund. To relieve them there must be some intention expressed by the legislature to that effect. *Village of Bath v. McBride* (1917), 221 N. Y. 231, revg. 163 App. Div. 714.

§ 82. Clerk.

The clerk of each village shall, subject to the direction and control of the board of trustees, have the custody of the corporate

seal, and of the books, records and papers of the village, and of all the official reports and communications to the board. He shall act as clerk of the board of trustees, and of each board of village officers, and keep a record of their proceedings; he shall keep an indexed record, in a separate book, of all village ordinances; he shall keep an accurate account of all orders drawn on the treasurer of the village, showing the persons to whom, and the fund from which, the amount of each order is to be paid. He shall, at all reasonable hours, on demand of any person, produce for inspection the books, records and papers of his office, and shall furnish a copy of any portion thereof, certified in the proper form to be read in evidence, upon the payment of his fees therefor, at the rate of six cents per folio.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 82; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3; tit. 8, sec. 13, but mostly new.

Cross references. Deputy clerks, see Ante, sec. 43; powers of deputies, see Public Officers Law, sec. 9; Recording with typewriter authorized, see Public Officer's Law, sec. 65; taking unlawful fees or rewards, see Penal Laws, sec. 1826.

Revisers' note (1897). Chap. 291 which provides that the trustees shall have the custody of the records and papers and seal belonging to the corporation. There is nothing in the act of 1870 defining the general powers of the clerk. This section is, therefore, new as an express provision. The act of 1847 (chap. 426, § 71) defines the power of a clerk more fully than the act of 1870. The clerk is required by this section to act as the clerk of each village board, in the same manner as the treasurer is required to act as treasurer of each of such boards. The water commissioners are now authorized by Laws 1875 (chap. 181, § 3) to appoint from their number a secretary. The sewer commissioners are authorized by the act of 1889 (chap. 375, § 2) to appoint a clerk to be paid a salary not exceeding two hundred dollars a year.

Village clerk may act as clerk of the Board of Health. Rept. of Atty.-Gen. (1898), 214.

Village clerk is now ex officio registrar of vital statistics for the Board of Health. Rept. of Atty.-Gen. (1899), 315.

The clerk of the village is made by statute the clerk of the board of trustees and it is his duty to keep a record of their proceedings. *People v. Shaw*, 34 App. Div. 61 (1898).

Extra compensation may be given a clerk for services not incident to his office, although as a general rule such officers are bound to perform the duties of their office for the compensation provided by law. *Matter of Village of Kenmore*, 59 Misc. 388 (1908), 110 N. Y. Supp. 1008.

A village clerk is not required to act as registrar of vital statistics without appointment or designation by the village board of health. Rept. of Atty.-Gen. (1911), Vol. 2, p. 622.

§ 83. Franchises; filing; duty of clerk.

Duplicate originals of every resolution, certificate or other instrument whereby a village, or any board or officer thereof, grants

a franchise, including a privilege or consent of any kind, to a public service corporation shall be executed and deposited with the village clerk; and such franchise shall not be operative for any purpose until so executed and deposited. The village clerk, upon receiving the same, shall file one such duplicate in his office with the records and papers of the village and shall immediately cause the other to be filed in the office of the clerk of the county in which the village is situated.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 82a, as added by L. 1906, Ch. 397.

Failure to affix seal. Where it is the duty of the clerk of the common council of a municipal corporation to affix his signature and seal of the city to a lease duly executed by the officials designated by the statute to make the lease, his failure to do so cannot alter the contract into which the city has thus entered with the lessees. *Mayor, etc., of New York v. Fulton Market Fishmongers' Ass'n*, 3 How. Pr. (N. C.), 491 (1886).

§ 84. Street commissioner.

Under the direction and supervision of the board of trustees, the street commissioner of a village has supervision and charge of the construction, improvement and repair of the public grounds, squares, parks, streets, walks, culverts, wells, and of such other property of the village as the board may determine; and may employ the requisite laborers, and direct them as to the time and manner of the execution of their work. He shall certify to the board of trustees, when required, the names of all persons who have been so employed, the rate of compensation and their term of service.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 83.

This section was new in former Village Law.

Cross references. Has power of policeman, see post, sec. 188.

Street commissioner not personally liable for injuries from defective streets, it not appearing that there had been any direction on the part of the board of trustees that repairs were needed. *Hungerford v. Village of Waverly*, 125 App. Div. 311 (1908), 109 N. Y. Supp. 438.

Complaint alleging that it is the duty of the street commissioner to keep the streets in repair, states only a conclusion of law which is not admitted by demurrer. *Hungerford v. Village of Waverly*, 125 App. Div. 311 (1908), 109 N. Y. Supp. 438.

Formal commission unnecessary for office of street commissioner. *Cotaneh v. Grover*, 57 Hun. 272 (1890), 10 N. Y. Supp. 754.

Commissioner performing duties of office becomes a de facto officer. *Cotaneh v. Grover*, 57 Hun. 272 (1890).

The authority of the street commissioner must be exercised under the direction and supervision of the board of trustees. *Rept. of Atty.-Gen.*, Apr. 20, 1911.

§ 85. Board of Health.

The board of health of each village shall have all the powers, and be subject to all the duties, provided by the public health law.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 84.

This section was new in former Village Law.

Cross references. Powers and duties of the Board of Health, see Public Health Law, secs. 20-50; powers of municipalities over, see Joyce on Nuisances, sec. 331; for general treatment of subject, see Parker and Worthington on Public Health and Safety.

May employ persons necessary to carry out the duties of the department for some definite period. *Kent v. Village of North Tarrytown*, 50 App. Div. 502 (1900).

Members of Board of Health are village officers and the manner of their election and appointment is governed by the Village Law. *People v. Scott*, 31 Misc. 131 (1900), 64 N. Y. Supp. 970, aff'd 57 App. Div. 630.

Cannot retain counsel to perform legal work which lies within the province of the village attorney. *Reynolds v. Village of Ossining*, 102 App. Div. 298 (1905).

Lack of funds on the part of the board of health at the time the services were rendered does not constitute a defense to an action brought against the village to recover for such services. *Kent v. Village of North Tarrytown*, 50 App. Div. 502 (1900).

§ 86. Compensation and duties of village officers not otherwise prescribed.

Except as provided in this section the president and trustees, and the fire, water, light, sewer and cemetery commissioners, shall serve without compensation, but the members of the board of trustees shall be entitled to the compensation fixed by law for inspectors of election when acting as such, and to the same compensation as town assessors for each day actually and necessarily spent by them in making the village assessment. The board of trustees of a village incorporated under and subject to this chapter or to a special law may, upon its own motion, and shall, upon the petition of twenty-five electors of such village qualified as provided by this chapter to vote upon a proposition, cause to be submitted at a village election a proposition to fix the compensation of the president or of the trustees or of the fire, water, light, sewer or cemetery commissioners of such village at an amount specified in such proposition. Only persons who possess the qualifications prescribed in this chapter for voters upon a proposition shall be entitled to vote upon such proposition. If such proposition be adopted the salary of the officer or officers shall be deemed fixed in accordance with the amount specified therein, but a proposition may be submitted in like manner at a subsequent election either changing the amount fixed by such resolution or providing that such officer or officers shall thereafter receive no compensation for services. A village may, on the adoption of a proposition therefor, determine that the compensation of the collector of such village shall be fixed by the board of trustees; after which determination the collector in said village shall not collect or receive fees.

The board of trustees may fix the compensation and further declare the powers and duties of all other village officers or boards and may require any officer or board of the village to furnish reports, estimates or other information relating to any matter within his or its jurisdiction.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 85; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 1; tit. 8, sec. 26, as amended by L. 1883, Ch. 459; L. 1875, Ch. 181, sec. 11; L. 1889, Ch. 375, sec. 2, as amended by L. 1891, Ch. 306; L. 1895, Ch. 430; amended by L. 1911, Ch. 66; L. 1913, Ch. 61, in effect March 6, 1913.

Cross references. Compensation of town inspectors and assessors, see Town Law, sec. 85; cannot act as inspector where candidate, see Election Law, sec. 302.

Village trustees acting as inspectors of election are entitled to compensation at the rate of two dollars a day, where the board of supervisors has not established a higher rate. *Matter of Village of Kenmore*, 59 Misc. 388 (1908), 110 N. Y. Supp. 1008.

Village officers are agents with limited powers and cannot bind the corporation by any act or contract not authorized by the authority conferred upon them. *Village of Fort Edward v. Fish*, 86 Hun, 548 (1895), 33 N. Y. Supp. 784; *aff'd* 156 N. Y. 363.

The salary of a village treasurer may be increased by the board of trustees by appropriate resolution effective after its adoption. *Opinion of State Comptroller* (1917), 12 State Dept. Rep. 514.

§ 87. Meetings of the board of trustees.

The president and the trustees of a village shall constitute the board of trustees thereof. The board shall meet at seven o'clock in the afternoon on the Monday following the annual election, and such meeting is known as the annual meeting of the board. The board shall hold other regular meetings at such times and places in the village as it shall, by resolution, provide. Special meetings may be called by the president or by any two trustees, by causing a written notice, specifying the time and place thereof, to be served upon each member of the board, personally, at least one hour, or by leaving a notice at his residence or place of business with some person of suitable age and discretion, at least twenty-four hours, before the time of meeting.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 86; originally revised from L. 1870, Ch. 291, tit. 3, sec. 1.

Cross references. Notice of meeting of board, see post, Form 29.

Revisers' note (1897). L. 1870, chap. 291, tit. III, § 1; R. S., 9th ed., 2274, which provides that special meetings may be called by the president or by the clerk on the written request of two trustees. This section authorizes a special meeting to be called by the president or by two trustees. The provision authorizing a substitute service twenty-four hours before the time of meeting, new. Otherwise, there is no change of substance.

§ 88. Presiding officer and rules of proceedings.

The president of the village shall preside at the meetings of the board of trustees, and shall have a vote upon all matters and questions coming before the board. A majority of the board shall constitute a quorum for the transaction of business, but a less number may adjourn and compel the attendance of absent members. Whenever required by a member of the board, the vote upon any question shall be taken by ayes and noes, and the names of the members present and their votes shall be entered in the minutes. The board may determine the rules of its procedure, and may compel the attendance of absent members by the entry

of a resolution in the minutes, directing any peace officer residing within the village, to arrest such absent member and take him before the board of trustees to answer for his neglect. A copy of the resolution, certified by the clerk of the village, shall be sufficient authority to any peace officer residing in the village, to arrest such absent member and bring him before the board.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 87; originally revised from L. 1870, Ch. 291, tit. 3, sec. 2; tit. 8, sec. 13.

Last two sentences new.

Cross references. Powers of majority, see General Construction Law, sec. 41; resolution for arrest, see post, Form 30.

§ 89. General powers of the board of trustees.

The board of trustees of a village:

1. **Village property and finances.**—Has the management and control of the finances and property of the village, except such as may be under the jurisdiction of the board of health, fire, water, light, sewer or cemetery commissioners, or other boards or officers of the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 1; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3.

The board of trustees is a creation of statute and has no inherent powers save those that are derived therefrom. In *Matter of Market Street*, 76 Hun, 85 (1894).

Members have no power to act as a board except when together in session. *People v. Shaw*, 34 App. Div. 61 (1898).

Single trustee cannot waive condition upon which the liability of the village depends. *Hungerford v. Village of Waverly*, 125 App. Div. 311 (1908), 109 N. Y. Supp. 438.

Premiums on official bonds. Board of trustees has no power to authorize such payment out of the village treasury. *Matter of Village of Kenmore*, 59 Misc. 388 (1908), 110 N. Y. Supp. 1008.

Cannot authorize purchase of fire works for a public entertainment, and use the public funds therefor, without express legislative authority. *Matter of Village of Kenmore*, 59 Misc. 388 (1908), 110 N. Y. Supp. 1008.

Discretionary powers devolving on the governing body of a municipal corporation cannot be delegated. *Birdsall v. Clark*, 73 N. Y. 73 (1878); *Village of Hillerman*, 73 Hun, 317 (1893); compare, *Edwards v. City of Watertown*, 24 Hun, 426 (1881); such powers will not be reviewed where all the proceedings are regular and no formality requisite to final action was omitted. *Adamson v. Nassau, etc., R. Co.*, 89 Hun, 261 (1895), 34 N. Y. Supp. 1073.

Trustees of a village have no right to enter into contracts with each other at the expense of those for whom they are acting and whose interests they are bound to protect. The illegality of such contracts does not depend upon statutory enactments, but is a principle of the common law. *Matter of Moran* (1911), 145 App. Div. 642, 131 N. Y. Supp. 438.

Right to insure itself and its employees. A village has no legal right to insure its employees against accident or to insure itself against liability for accidents arising from slippery or defective sidewalks and pay premium out of the funds of the village. *Rept. of Atty.-Gen.*, Feb. 21, 1912.

Transfer of surplus from sewer fund to light fund. The board of trustees of a village, operating under the Village Law, may transfer a surplus existing in the sewer fund, not needed during the year for the purposes of that fund, to the light fund, provided that surplus is made up of revenues derived from taxation under subdivision 4 of section 110 of the Village Law or of revenues other than from direct taxation not specifically provided by law to be credited to the sewer fund. (*Opinion of State Comptroller*, May 31, 1916), 9 State Dept. Rep. 490.

2. Buildings to be kept in repair and insured.—Shall keep all buildings and other property of the village in repair, and may cause the same to be insured against loss or damage by fire.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 2; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 25, as amended by L. 1893, Ch. 212.

Cross references. Insurance, see General Municipal Law, sec. 78.

Revisers' note (1897). L. 1870, chap. 291, tit. III, sec. 3; R. S., 9th ed., 2275, L. 1870, chap. 291, tit. III, sec. 3, subd. 25; R. S., 9th ed., 2278. No substantial change is made by this subdivision.

3. Village lands.—May purchase, hold and convey real property in the name of the village, but only after the adoption of a proposition therefor at a village election. Every conveyance by the village shall be executed in its corporate name, by the president, in pursuance of a resolution of the board of trustees.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 3; originally revised from L. 1870, Ch. 291, tit. 8, sec. 4.

Revisers' note (1897). The first part of the section is new, as an express provision.

Municipal corporations when not restrained by statute have the inherent right to sell and convey property upon which no trust is imposed. *Kings, etc., Ins. Co. v. Stevens*, 101 N. Y. 411 (1886).

Land acquired for one purpose may be used for another not inconsistent therewith. *Winkler v. Summers*, 22 Abb. N. Cas. 80 (1888).

4. Village buildings.—May erect and maintain upon village lands, or may rent and furnish, necessary buildings for holding elections, for the use of the village officers, or for other necessary village purposes, and may furnish necessary books, stationery and other supplies for village officers.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 4; originally revised from L. 1870, Ch. 291, tit. 3, sec. 15.

Cross references. Joint town and village buildings, see Town Law, sec. 341; lease of buildings to G. A. R., see General Municipal Law, sec. 77; display of foreign flags, see Public Buildings Law, sec. 81.

Revisers' note (1897). The general power to erect, maintain or to rent and furnish buildings for elections and for the general use of village officers is new, although by section 15 of title III of the act of 1870 the trustees are authorized to provide a suitable room for holding their meetings.

5. Lock-up.—May erect and maintain a lock-up, or designate a place for the detention of persons arrested under this chapter or under any ordinance of the village; and may contract with a town in which any part of a village is situated for the temporary detention in such lock-up of persons arrested in such town.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 5; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 3, in part, as amended by L. 1883, Ch. 153.

Last clause is new.

Revisers' note (1897). The provisions for maintaining a lock-up in subdivision 3 of section 3 of title III of the act of 1870 is here re-enacted without material change.

6. Market.—May purchase or lease lands or buildings for the establishment and maintenance of a market; may lease such market or any part thereof, for such term and at such rent as it may determine; and may prohibit the establishment of a market in the village, except at such place as it may designate.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 6. This subdivision was new in former Village Law.

Cross references. Slaughter houses, see Parker and Worthington on Public Health and Safety, secs. 277-284.

Power to regulate slaughter-houses includes the power of total prohibition within certain limits and localities. *Cronin v. People*, 82 N. Y. 318 (1880), aff'g 20 Hun, 137.

7. Fire limits.—May establish fire limits, by resolution, filed in the office of the village clerk, and posted in three public places in the village; and may provide in said resolution that certain streets or blocks as designated therein shall constitute the limits within said village within which wooden buildings or structures may not be erected or substantially altered.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 7; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 13, in part, as amended by L. 1874, Ch. 474.

Amended by L. 1910, Ch. 651, in effect June 24, 1910.

Cross references. Power of municipalities to establish fire limits, see Joyce on Nuisances, sec. 342.

8. Official paper.—May designate a newspaper as the official paper of the village. If but one newspaper is published in the village, it shall be designated as the official paper, if any paper is so designated. If no newspaper is published in the village, any other newspaper published in the same county, having in the opinion of the board, the largest circulation in the village, may be so designated. If no official paper has been designated, the designation of a newspaper for the publication of a notice, resolution, ordinance or other proceeding of the board, shall be deemed

a designation thereof as the official paper of the village for the purpose of such publication. The fees of the official paper shall be fixed by the board at a rate not exceeding seventy-five cents per folio.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 8.

This subdivision was new in former Village Law.

Editor's note. The Legislature struck out a provision requiring the minutes of the proceedings of the board of trustees to be published. It also provided that the designation of an official paper should be permissive instead of mandatory.

9. Village map.—Shall cause a map of the village to be made and kept on file with the clerk, showing the boundaries of the village and the names and boundaries of all streets and public grounds therein; also the location of all sewers, hydrants, water pipes, and all under-ground pipes and works belonging to the village, and shall, when necessary, cause such map to be revised, corrected and renewed.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 9; originally revised from L. 1870, Ch. 291, tit. 3, sec. 14.

10. Names of streets.—May give names to the streets and public places, and numbers to the lots or buildings, in the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 10; originally revised from L. 1870, Ch. 291, tit. 3, sec. 12.

11. Village attorney.—May employ an attorney and pay him a reasonable compensation.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 11; originally revised from L. 1870, Ch. 291, tit. 3, sec. 12.

Board of trustee's power to employ is exclusive of other boards and officers. *Mark v. Village of West Troy*, 69 Hun, 442, 23 N. Y. Supp. 422 (1893); *Collins v. Village of Saratoga Springs*, 70 Hun, 583 (1893), 24 N. Y. Supp. 234, aff'd 140 N. Y. 637; *People v. Town*, 1 App. Div. 127 (1896), 37 N. Y. Supp. 864.

Special counsel may be employed to perform some peculiar or special service, but ordinarily the departments of the village should be represented by its own attorney. *Reynolds v. Village of Ossining*, 102 App. Div. 298 (1905).

None other than legally designated attorney has right to represent the village or any board or officer thereof. *Collins v. Village of Saratoga Springs*, 70 Hun, 583 (1893), 24 N. Y. Supp. 234, aff'd 140 N. Y. 637.

President and trustees may employ attorney to defend action brought against them in their official capacity. *Squire v. Preston*, 82 Hun, 88 (1894), 31 N. Y. Supp. 174.

Counsel for board of trustees in an action instituted against them, cannot be compensated out of the public funds. *Matter of Village of Kenmore*, 59 Misc. 398 (1908), 110 N. Y. Supp. 1008.

"Reasonable compensation" based upon the sound judgment of the board of trustees and upon actual knowledge of the services rendered, should not be assailed in the absence of proof that the compensation claimed and allowed was excessive and unwarranted. In *re Village of Kenmore*, 59 Misc. 398 (1908), 110 N. Y. Supp. 1008.

Village attorney represents board of health in all ordinary matters requiring legal services. *Reynolds v. Village of Ossining*, 102 App. Div. 298 (1905).

An attorney is authorized to appear for the village in certiorari proceedings to review an assessment of property. *People ex rel. Cook v. Dunkel* (1910), 69 Misc. 361, 125 N. Y. Supp. 385.

12. Public pound.—May establish and maintain a public pound and employ a keeper thereof, and fix his compensation, and the fees to be charged by him.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 12; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 8.

13. Village clock and scales.—May establish and maintain a village clock and scales for the public convenience; and fix the fees for the use of such scales.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 13. This subdivision was new in former Village Law.

14. To act as fence viewers.—Possesses concurrent jurisdiction with town fence viewers, and has all their powers with respect to division fences within the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 14. This subdivision was new under former Village Law.

Cross references. Powers of fence viewers, see Town Law, sec. 364.

15. Drains.—May construct drains and culverts and regulate water courses, ponds and watering places within the village and power and authority is hereby conferred upon the board of trustees of a village, in the name of the village, to acquire title to real property for public use, or an easement for a right of way therein necessary therefor, whether such real property, or an easement for a right of way therein is located within or without such village, by purchase, or if unable to agree with the owners for the purchase of such real property or an easement for a right of way therein, the board of trustees may acquire such real property or easement for a right of way therein, by condemnation as provided by and under chapter twenty-three, title one of the code of civil procedure, for any of the purposes mentioned in this subdivision and to protect the property within the village from floods, freshets and high water. The board of trustees may cause such construction or regulation, as the case may be, with respect to drains,

culverts, water courses, ponds and watering places to be done wholly at the expense of the village, or of the owners of the property benefited, or partly at the expense of each; but such construction or regulation shall not be wholly at the expense of the owners of the property benefited, or partly at the expense of such owners and partly at the expense of the village, except as provided by the provisions, so far as applicable, of sections two hundred and sixty-two to two hundred and seventy-six, both inclusive, of this chapter, which said provisions, so far as applicable, are extended to and shall apply to the powers conferred by this subdivision.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 15, as amended by L. 1904, Ch. 193; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 25, in part, as amended by L. 1893, Ch. 212.

Amended by L. 1910, Ch. 454, and L. 1916, Ch. 36, in effect March 10, 1916.
Cross references. May borrow money, see post, sec. 128.

16. Water supply.—May establish, regulate and repair public reservoirs, aqueducts, pumps, wells, fountains, and watering and drinking places.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 16; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 13, in part, as amended by L. 1874, Ch. 474.

Revisers' note (1897). L. 1870, chap. 291, tit. III, sec. 3, subd. 13; R. S., 9th ed., 2276, in part without change. The provisions as to pumps, wells and fountains is in many special charters.

Failure to maintain sufficient quantity of water to extinguish fire does not create cause of action against the municipality on the part of the party aggrieved. *Wainwright v. Queens, etc., Co.*, 78 Hun, 146 (1894), 28 N. Y. Supp. 987.

17. Lighting streets.—May provide for the lighting of the streets and the safety of the lamps.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 17; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 10.

Mandamus will not lie to compel corporation to furnish light. *Wainwright v. Queens, etc., Co.*, 78 Hun, 146 (1894), 28 N. Y. Supp. 987.

Trustees have power to grant a franchise to an individual or a corporation authorizing the installation and operation of an electric light plant. *Wakefield v. Village of Theresa*, 125 App. Div. 38 (1908), 109 N. Y. Supp. 414.

18. Stands for vehicles.—May designate stands for hacks, carriages and other vehicles.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 18; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 22, in part, as amended by L. 1878, Ch. 281.

The power should be exercised with discretion, and their direction does not amount to a defense to the owner of coaches so stationed against a private action for injunction and damages for obstructing the entrance to the plaintiff's premises. *Masterson v. Short*, 7 Robt. 241; S. C., 33 How. Pr. 481 (1867), where a preliminary injunction was denied upon the contrary doctrine.

19. When to have powers of other boards.—Has all the powers and is subject to all the liabilities, and must perform all the duties, of a separate board of fire, water, light, sewer or cemetery commissioners, if the village has no such separate board; and in that case a provision applying to either of such boards applies to the board of trustees.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 19.

This section was new in former Village Law.

Cross references. For powers of other boards, see the several articles of this chapter.

Where there is no board of water commissioners the board of trustees is required to act. *Village of Waverly*, 127 App. Div. 440 (1908), 111 N. Y. Supp. 541, aff'd 194 N. Y. 31.

Power to appoint a chief engineer of fire department of Dobbs Ferry which has no board of fire commissioners held to rest with the board of trustees and not with the council of the fire department, under section 206 of the Village Law. *People ex rel. Wallace v. Carpenter* (1912), 77 Misc. 244.

20. Banks of deposit.—Shall designate banks for the deposit of all moneys received by the treasurer, and may require of any such bank security for the repayment thereof; and may require a report by the cashier thereof to each regular meeting of the board of the amount on deposit to the credit of the treasurer.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 20, originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 30, as amended by L. 1890, Ch. 236.

21. Auditing bills.—Shall audit all bills and accounts and all claims for damages against the village, except that in villages having a separate board of fire, water, light, sewer, park or cemetery commissioners, or board possessing the powers of two or more such boards or a village board possessing like powers, it may, by ordinance, authorize, empower and direct such board or boards to audit and order paid all bills and accounts incurred by such board or boards and which are payable out of the funds within the jurisdiction of such board or boards, but no bill or account against the village or any such board or boards for property purchased, materials furnished, services rendered, or disbursements, shall be audited or paid, nor shall an action be brought thereon unless such bill or account shall be made out on items, and properly dated with an affidavit attached thereto by the person, or one of the persons, or an officer of a corporation, presenting or claiming the same, that the items of such bill or account

are correct, that the services and disbursements charged therein have been in fact rendered or paid, and that no part thereof has been paid or satisfied. The board or boards shall cause to be entered upon its or their minutes the amount claimed, the amount allowed, and the fund from which each amount allowed shall be paid. No action shall be brought upon any such bill or account within thirty days from the time the same was presented to the board authorized to audit the same.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 21; originally revised from L. 1870, Ch. 291, tit. 3, sec. 9, in part, as amended by L. 1889, Ch. 440. Amended by L. 1917, Ch. 150, in effect April 6, 1917.

Cross references. Form of account, see post, Form 31; action for damages, see post, sec. 341; presentation of claims, see ante, sec. 82, notes; costs when not allowed, see Code of Civ. Pro., sec. 3245; presentation of false claims, see Penal Law, sec. 1873; false auditing and payment, see Penal Law, secs. 1863, 1864.

Presentation to president or treasurer is not sufficient. *Mark v. Village of West Troy*, 69 Hun, 442 (1893), 23 N. Y. Supp. 422.

Power to audit claims includes authority to determine whether the same is reasonable and legal. *People v. Trustees of Penn Yan*, 2 App. Div. 29 (1896), 87 N. Y. Supp. 535; *aff'd* 153 N. Y. 643.

Decision of board is not final adjudication upon the claim, and action may be subsequently brought thereon. *Port Jervis, etc., Co. v. Village of Port Jervis*, 151 N. Y. 111 (1896).

Duty to audit is a positive one, and the word "may" as used in the statute has been construed as "must." *People v. Gilroy*, 82 Hun, 500 (1894), 64 N. Y. St. Rep. 480, 31 N. Y. Supp. 776, *aff'd* 145 N. Y. 596.

Where there has been no appropriation a creditor can only have a mandamus to audit not to pay. *People v. Green*, 46 How. Pr. 367 (1874).

Complaint alleging rendition of services, the presentation of the bill to the board of trustees for audit, the rejection of the bill and the lapse of thirty days since rejection is sufficient. *Kent v. Village of North Tarrytown*, 50 App. Div. 502 (1900), 64 N. Y. Supp. 178.

Attorney; recovery of salary after village becomes city. An attorney at law retained by an incorporated village at an annual salary is not an officer of the village. Where several months after plaintiff's appointment as attorney for an incorporated village at an annual salary the city, which pursuant to legislative enactment came into existence as the successor corporation of the village, refused to permit him to complete his services, he is entitled to recover from it the unpaid balance of his salary due upon the contract of his general retainer. *Fisher v. City of Mechanicville* (1916), 94 Misc. 134, 157 N. Y. Supp. 518.

22. Parades of fire department.—May provide for the public inspection and parade of the fire department, at an annual expense, including the hiring of a band, not exceeding two hundred dollars.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 22; originally revised from L. 1895, Ch. 437.

No appropriations can be made for parades held outside of the village limits. *Matter of Village of Kenmore*, 59 Misc. 388 (1908), 110 N. Y. Supp. 1008.

22-a. Band concerts.—May provide for public band concerts within the village, annually between June first and September fifteenth, but only after a proposition therefor, the submission whereof

is hereby authorized, shall have been duly adopted at a village election, which proposition shall state the maximum amount to be expended for such purpose in any one year.

Derivation. Added to section 88 by L. 1911, Ch. 519, by mistake. Transferred to and added to section 89 and amended by L. 1913, Ch. 19, in effect Feb. 14, 1913.

23. Dumping grounds.— May, whenever in its judgment the interests of the village require it, purchase or acquire by condemnation proceedings lands for the establishment of a public dump or dumping ground in any such village, and may prohibit the use of any other lands within the village for such purposes.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 23, as added by L. 1901, Ch. 50.

24. Fire protection.— May make contracts for fire protection, and extinguishing of fires, with the fire department in the village or an adjoining incorporated or unincorporated village or the fire commissioners of a fire district for a term of years not to exceed ten. (Subd. amended by L. 1911, Ch. 495, and L. 1918, Ch. 27, in effect March 4, 1918.)

Derivation. Former Village Laws (L. 1887, Ch. 414), sec. 88, subd. 24, as added by L. 1901, Ch. 593; see Consolidator's note, B., C. and G., Annotated Statutes.

Consolidator's note. Relates to powers of boards of trustees. Word "to" changed to "may" to make it correspond to the other subdivision, which provide what the board "may" or "shall" do.

The preliminary statement of the section is "The board of trustees of a village" which cannot grammatically be followed by the word "to" while a statement that "The board of trustees of a village may make contracts" would be correct.

25. Disposition of garbage and ashes.— a. May provide for the removal from the buildings in said village and for the disposition of swill, garbage, ashes and rubbish of said buildings, or for the removal and disposition of the swill and garbage alone, or the ashes alone, either directly through the employees of said village or by contracting with other persons or with the town in which such village is located, provided, however, that authority shall be first obtained therefor by a proposition adopted at a village election, which proposition shall state the maximum amount to be expended for such purpose or purposes in any one year.

b. Upon the adoption of a proposition therefor at a village election, may establish or construct a plant for the disposal of swill, garbage, rubbish and ashes, or any of them, and may purchase or lease real property therefor and vehicles or other appurtenances to be used in connection therewith. Such proposition shall state the estimated maximum and minimum cost thereof. Upon the acquisition of such plant, may, without the adoption of any propo-

sition as to the amount to be expended therefor in any one year, operate the same and collect and dispose of swill, garbage and rubbish, either directly through the employees of said village or by contracting with other persons or with the town in which such village is located for a period not exceeding five years. (Amended by L. 1916, Ch. 114; L. 1917, Ch. 27, and L. 1918, Ch. 385 in effect April 30, 1918.)

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 25, as added by L. 1905, Ch. 500.

Not a governmental function of abating a nuisance, but a private duty which would otherwise rest upon the property owners. Consequently the municipality is liable for injury received at the hands of a driver belonging to the street cleaning department. *Quill v. Mayor, etc., of New York*, 36 N. Y. 476 (1899).

26. Marking of poles.— May require all telephone, telegraph, electric light and electric power poles where the same are located upon a public highway within the limits of said village, to be marked with the name or initial of the owner or owners of the poles, in such distinct and legible letters and characters, and in such manner as they may prescribe.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 88, subd. 26, as added by L. 1908, Ch. 301.

27. May contract at the expense of the village for indemnity insurance insuring the village against damages for injuries to persons.

Added by L. 1914, Ch. 403, in effect April 17, 1914.

28. Publicity fund.—When authorized by a resolution duly adopted by a majority of the qualified voters of such village, voting thereon at a general village election or at a special election called and held for such purpose, may establish a publicity fund of such amount as the resolution may direct, to be expended for the purpose of advertising the advantages of such village as a summer and winter resort or otherwise, including the necessary and legitimate expense of securing the designation of such village as the place for holding the convention or meeting of any organization or society, and for such other and additional purposes as may tend to promote the general commercial and industrial welfare of the village, and for that purpose may raise by taxation a sum not exceeding one thousand dollars per annum to be assessed, levied and collected in the same manner that other village taxes are assessed, levied and collected.

Added by L. 1916, Ch. 108, in effect April 1, 1916.

29. Lighting districts.—Shall have the power, upon application by a petition in writing of a majority of the resident owners of taxable real property within the boundaries of a proposed lamp or lighting district as the same appear upon the last preceding completed assessment roll, to establish such special lighting district or districts for the proposed system of street lighting and from time to time alter or extend the same with full power to order such construction and installation and to enter into a contract for lighting in such district or districts so established or extended as said board may deem proper or expedient. Such petition shall contain a map of such district and a description of the same, and said district or districts or any extension thereof shall become established by the filing by the board of trustees of a certificate in the office of the village clerk describing the bounds of such district or districts or any extension of the same. The amount of any contract that may be entered into for such special lighting district, pursuant to the provisions of this subdivision, when established upon the petition of the property owners, shall be apportioned by the board of trustees by ordinance between the owners within such district and the village at large; but in no event shall said owners be charged more than the per centum specified in the application, and said amounts so apportioned to the property owners shall be assessed, levied and collected in the same manner and by the same officers as the village taxes, charges or expenses for such village are now assessed, levied and collected. The board of trustees may, on its own motion, and shall upon the petition of twenty-five electors qualified to vote upon a proposition, cause to be submitted at the next regular or special village election a proposition for a special lighting district or districts or any extensions thereof. When the lighting district or districts or any extensions thereof are established pursuant to a proposition submitted at any village election, the amount of any contract entered into for such special lighting shall be assessed, levied and collected upon and between all of the taxable property in said village in the same manner and by the same officers as the village taxes, charges or expenses are now assessed, levied and collected.

Added by L. 1917, Ch. 414, in effect May 8, 1917.

§ 90. Village ordinances.

The board of trustees has power to enact, amend and repeal ordinances for the following purposes:

1. Relating to peace and good order generally.— To preserve the public peace and good order; to prevent and suppress vice,

immorality, disorderly and gambling houses and houses of ill-fame, riots and tumultuous assemblages, unnecessary crowds upon the streets, or in doorways or stairways adjacent thereto, or loitering about such places, and all disorderly, noisy, riotous or tumultuous conduct within the village, disturbing the peace and quiet of the village or any meeting or assembly therein.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 1; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 2; tit. 8, sec. 18, in part.

State law and ordinance. Board of trustees may pass an ordinance providing a penalty for an act which is prohibited by a state law and punishable as a crime. Rept. of Atty.-Gen. (1903), 310.

Authority to pass ordinance consists of the delegation by the legislature to the board of trustees of the village of such local legislative powers as may be suitable to their proper organization, and is therefore an exercise of the sovereign power of the state. *Consumer's, etc., Co. v. Congress Springs Co.*, 15 N. Y. Supp. 624 (1891).

Bicycle license. Where the charter of a village gives to the trustees general supervision of its street and sidewalks, they have power to adopt an ordinance authorizing licenses to ride bicycles on the sidewalks, and the mere granting of such license does not make the village liable for injuries sustained in consequence of the improper or negligent acts of the licensee, unless after notice that such licensee was, in the first instance, an improper person or was negligent or careless in the exercise of the privilege granted him, the trustees neglected or refused to revoke the license or to take other steps for the protection of the public, or the granting of such licenses creates a public nuisance. *Lechner v. Village of Newark*, 19 Misc. Rep. 452 (1896), 44 N. Y. Supp. 556.

Village authorities have power to permit the riding of bicycles upon sidewalks, but when not subjected to reasonable regulations, section 1907 of the Penal Law applies. Report of Atty.-Gen., 1912, vol. 2, p. 488.

An ordinance prohibiting the keeping of honey bees cannot be passed by a village incorporated under the Village Law. Rept. of Atty.-Gen., Apr. 11, 1911.

2. Animals at large.—To restrain the running at large of horses, cattle, sheep, unmuzzled dogs, fowls or other animals, and may authorize the impounding and sale of the same for the penalty and costs of keeping and proceedings, or the killing of such unmuzzled dogs.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 2; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 8, 9.

Employment of assistants. An ordinance authorizing an officer to drive animals to a pound, and to hire necessary assistants does not authorize any person to do so, although the officer has given public notice that any such person would be paid therefor. *Jackson v. Morris*, 1 Den. 199.

3. Fast driving.—To regulate or prevent fast riding or driving, or the leaving of horses untied or hitched an unreasonable time in the streets or public places, or the driving of animals on the sidewalk.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 3; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 18.

Cross references. Ordinances to regulate use of bicycles and similar vehicles. See post, General Municipal Law, sec. 180.

4. Amusements.—To regulate or prevent coasting, ball playing or any act, amusement or practice, endangering property or persons on the streets or public grounds.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 4; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 14, as amended by L. 1882, Ch. 305.

Statute contemplates criminal proceeding against persons violating ordinance. *Roderick v. Whitson*, 51 Hun, 620 (1889).

Bicycle riding on sidewalk may be prohibited by ordinance. *Fuller v. Redding*, 16 Misc. 634 (1896), 39 N. Y. Supp. 109.

5. Incumbering streets; encroachments.—To regulate or prevent incumbering the streets or public grounds with any material whatever, or any encroachment or projection in, over, or upon any of the streets or public grounds, or any excavations immediately adjacent thereto.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 5; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subds. 6, 7.

No nuisance where deposits are properly guarded. *Village of Seneca Falls v. Zalinski*, 8 Hun, 571 (1876).

Mandamus will not lie to compel the mayor to institute proceedings for the removal of an incumbrance, and his discretion in this regard is not affected by a resolution of the Common Council requesting his action in the matter. *People v. Maher*, 141 N. Y. 330 (1894).

Encroachments may be enjoined in an action on the part of the village. Such right of action while not expressly conferred by the Village Law is to be implied from the Highway Law (L. 1890, Ch. 568, sec. 15) granting such right to towns. *Village of Oxford v. Willoughby*, 181 N. Y. 155 (1905), aff'g 87 App. Div. 609.

Municipality may permit portions of its streets to be devoted to necessary and useful purposes provided ample passage way is left for the public. *Tubessing v. City of Buffalo*, 51 App. Div. 14 (1900); *Dougharty v. Village of Horseheads*, 159 N. Y. 154 (1899); *Ring v. City of Cohoes*, 77 N. Y. 83 (1879); *Dubois v. City of Kingston*, 102 N. Y. 219 (1886).

Erection of monument at a street intersection so as not to interfere with the reasonable use of the same is not unlawful. *Wallace v. Village of Canandaigua*, 117 N. Y. Supp. 912 (1909).

Consent implied where materials are kept in street with full knowledge of village officers. *Village of Seneca Falls v. Zalinski*, 8 Hun, 571 (1876).

Authorities cannot legalize obstruction so as to bar the public right; user, though long continued, is not obstacle to proceedings for removal. *People v. Mayer*, 141 N. Y. 330 (1894).

Municipal authorities not warranted in permitting the exclusive use of a considerable portion of the street for the maintenance of abutments and piers. *Delaware, etc., R. Co. v. City of Buffalo*, 4 App. Div. 562 (1896), 38 N. Y. Supp. 510; *aff'd* 158 N. Y. 266.

The location of electric light pole having been assented to by the village, it is in *pari delicto* and cannot claim contribution from the electric light company in an action for personal injuries. *Village of Geneva v. Brush, etc., Co.*, 50 Hun, 581 (1889).

Instances of obstructions. *Front stoop, Crooke v. Anderson*, 23 Hun, 267 (1880); *show case, Hallock v. Scheyer*, 33 Hun, 111 (1884); *horse and wagon, Flynn v. Taylor*, 53 Hun, 167, 6 N. Y. Supp. 96 (1889); *aff'd* 127 N. Y. 596; *banner suspended across street, Champlain v. Village of Penn Yan*, 34 Hun, 33 (1884).

5-a. **Barbed wire fences.**—To forbid the use and maintenance, by owners and occupants of property abutting on public streets or grounds, of barbed wire or similar fences along the boundaries of such streets or grounds.

Added by L. 1910, Ch. 69, in effect April 5, 1910.

6. **Parades.**—To regulate or prevent all parades, exhibitions, and the parade or playing of bands of music upon the streets or public grounds.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 6. This subdivision was new in former Village Law.

Cross references. Ordinance requiring permit, see *Joyce on Nuisances*, sec. 337.

Constable may arrest persons concerned and hold them for trial. *Roderick v. Whitson*, 51 Hun, 620 (1889).

7. **Blowing of steam.**—To regulate or prevent the blowing of steam into, upon or over the streets.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 7. This subdivision was new in former Village Law.

8. **Shade trees.**—To protect and preserve shade trees in the streets and public places, and to prevent the hitching of horses to such trees.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 8. This section was new in former Village Law.

9. **Poles and wires; granting franchises.**—To regulate the erection of telegraph, telephone or electric light poles, or the stringing of wires in, over or upon the streets or public grounds, or upon, over or in front of any building or buildings; but after

this section takes effect no franchise, or right, to erect or construct any line of poles or wires to furnish light or power within such village or to build, construct, erect or maintain any additional line of sewer, water or gas pipes, over, along, across, or under any of the streets, avenues, lanes or public grounds of such village shall be granted to any individual, firm, association, copartnership or corporation when such village owns and uses an electric light plant or water-works; until the question of granting such right or franchise shall have been duly submitted to the qualified electors of such village, at an annual election, or at a special election duly called and held for that purpose and adopted by a majority of the votes of duly qualified voters cast at such election.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 9, as amended by L. 1906, Ch. 577.

This section was new in former Village Law.

Cross references. Prescriptive right not acquired by leaser, see Real Property Law, sec. 261.

Village authorities may designate streets in which telephone or telegraph poles shall be strung, and may also require such wires to be put in underground conduits. Rept. of Atty.-Gen. (1906), 630.

Authority to erect telephone and telegraph poles in the street is not conferred by the Village Law, the extent of authority conferred being to regulate only. *Village of Carthage v. Central, etc., Co.*, 185 N. Y. 448 (1906), rev'g 110 App. Div. 625; 96 N. Y. Supp. 919.

In absence of statutory authority a village has no power to compel a telephone company to place an extension of its existing lines in underground conduits. *Village of Carthage v. Central, etc., Co.*, 185 N. Y. 448 (1906), rev'g 110 App. Div. 625; 96 N. Y. Supp. 919.

Right must be acquired by condemnation and telephone company holding a franchise from the village cannot erect poles in the street without compensating the owner of the fee. *Powers v. State, etc., Co.*, 116 App. Div. 737 (1907); see *Eels v. American, etc., Co.*, 143 N. Y. 133.

Ordinance granting right to erect poles in the street cannot be attacked collaterally. *Consumers Gas Co. v. Congress Spring Co.*, 61 Hun, 133 (1891).

Franchise of electric plant cannot be impeached on the ground that there has been no formal renewal, after the village authorities have acquiesced in the right from year to year without objection, and they may be enjoined from removing poles and wires from the street. *Wakefield v. Village of Theresa*, 125 App. Div. 38 (1908), 109 N. Y. Supp. 414.

10. **Railroad crossings; speed.**—To regulate the time during which cars, engines or trains may stand upon the street crossings of railroads; to regulate the speed of locomotives and cars, subject to the provisions of the railroad law, and by a two-thirds vote of all the members of the board, to require railroad companies

to erect gates at crossings, to employ competent men to attend the same, and to employ competent flagmen at such crossings.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 10. This subdivision was new in former Village Law.

Cross references. Signboards and flagmen at crossings, see post, Miscellaneous Laws; Railroad Law, sec. 33 [New 53].

Ordinance is reasonable requiring a rate of not more than six miles an hour in a populous city. *City of Buffalo v. New York, etc., R. Co.*, 152 N. Y. 276 (1897).

11. Sidewalks.—To compel owners or occupants of lands to clear snow, ice, dirt and other obstructions from the sidewalk in front thereof.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 11; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 16, in part, as amended by L. 1895, Ch. 743.

Cross references. Incumbering, see Ante, this section, subd. 5; assessment of expense of clearing, see post, sec. 163; liability for defects in sidewalks, see post, sec. 141.

12. Fireworks and firearms.—To regulate or prevent the discharge of firearms, rockets, gunpowder or other explosives, or the making of bonfires.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 12; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 26.

13. Inflammable materials.—To regulate the use of candles, kerosene, light, fires or burning materials of any kind in barns, stables or other buildings especially liable to take fire.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 13; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 23, as amended by L. 1877, Ch. 16.

Ordinance construed to give effect to all of the language used. *Village of New Rochelle v. Clark*, 65 Hun, 140 (1892).

14. Construction of chimneys, et cetera.—To regulate the use and construction of chimneys, fire-places, stoves and heating apparatus, and the deposit of ashes, and any member of the board or any person authorized by it may enter, when necessary, in the day time, any building within the village, to make an examination with reference to the evasion or violation of such ordinance.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 14; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 13, in part, as amended by L. 1874, Ch. 474.

15. Gunpowder.—To regulate the storing, sale or transportation of gunpowder or other explosives within the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 15; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 19.

16. Fire limits.—To prevent the construction or rebuilding of wooden buildings, or the use in any building within the fire limits of materials liable to take fire. In addition to an action or proceeding to recover the penalty prescribed by the ordinances for a violation of this subdivision, the board of trustees may present a verified petition of a justice of the supreme court, or to a special term of the supreme court of the judicial district, or to the county court or the county judge of a county in which any part of the village is situated, for an order enjoining the violation thereof. Such petition shall state the facts concerning the alleged violation. Upon the presentation of the petition the justice, judge or court shall grant an order requiring such person to appear before him, or before such special term or county court, respectively, on a day specified therein, not more than ten days after the granting thereof, to show cause why such person should not be permanently enjoined from violating such ordinance. A copy of the petition and order shall be served in the manner directed by such order, not less than five days before the return day thereof. On the day specified in such order, the justice, judge or court, before whom the same is returnable, shall hear the proofs of the parties, and may, if deemed necessary and proper, take testimony in relation to the allegations of the petition, or appoint a referee for that purpose. If it appears that such person is violating the ordinance, an order shall be made enjoining him therefrom. If, after the entry of such order in the county clerk's office of a county in which a part of the village is situated, and the service of a copy thereof upon him, or after a substituted service, as the justice, judge or court may direct, such person shall violate such ordinance, such violation shall be deemed a contempt of court, and punishable in the manner provided by the code of civil procedure. Costs upon the application for such injunction may be awarded in favor of and against the parties thereto, in the discretion of the justice, judge or court before whom the petition is heard. If awarded against the village, the costs shall be a village charge.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 16; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 13, in part, as amended by L. 1874, Ch. 474, subd. 23, as amended by L. 1877, Ch. 16.

Cross references. Power of municipalities as to establishment of fire limits, see *Joyce on Nuisances*, sec. 342.

Authority to prevent use of inflammable material means the prevention of the use of such material in the construction of a building and not to prevent the use of a building constructed for the storage of such material. *Village of Skaneateles v. Hennessy*, 62 Misc. 374 (1909), 116 N. Y. Supp. 788.

Under former law equity would not interfere unless in case of nuisance. *Village of New Rochelle v. Long*, 75 Hun, 608 (1894).

In the absence of ordinance establishing fire limits, the trustees may not enjoin the erection of a wooden building. *Village of Skaneateles v. Hennessy*, 62 Misc. 347 (1909), 116 N. Y. Supp. 788.

Fire limits ordinances, see *Village of Watkins v. Hillerman*, 73 Hun, 317 (1893).

17. Swimming and bathing.—To regulate swimming and bathing in open water, exposed to the public, within or bounding the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 17; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 17.

Cross references. Public baths, see *General Municipal Law*, sec. 121.

17-a. Taking fish bait from shore.—To prevent a nonresident of the village taking fish bait from shores within or bounding upon the village without a license from the board of trustees; but before such ordinance shall be effective it shall be approved by resolution of the board of supervisors of the county within which such village is located. (Subd. added by L. 1918, Ch. 253, in effect April 17, 1918.)

18. Improper noises.—To regulate or prevent the ringing of bells, blowing of horns and steam whistles, and the making of other improper noises in the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 18.

This section was new in former Village Law.

The provisions of the general act for the incorporation of villages justify the passing of an ordinance rendering it unlawful for any person to go about or remain in any of the streets or sidewalks of the village beating any drum or tambourine, or making any noise with any instrument for any purpose whatever, without the written permission of the president of the village, under a penalty of five dollars for each offense. *Roderick v. Whitson*, 51 Hun, 620; S. C., 22 N. Y. St. Repr. 558; 4 N. Y. Supp. 112 (1889); *People v. Garaked*, 45 N. Y. Supp. 827 (1897), rev'd 49 N. Y. Supp. 1141.

Arrest of Salvation Army held justifiable. *Roderick v. Whitson*, 51 Hun, 620, 4 N. Y. Supp. 112 (1889).

19. Landing of boats; passengers.—To regulate or prevent the landing within the village of excursion boats, or passengers therefrom.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 19; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 28, as added by L. 1884, Ch. 129.

20. Water-works and sewerage system.—To punish all violations of the rules of the board of trustees, or of the board of fire, water, light, sewer or cemetery commissioners, which have been approved by the board of trustees, relating to the prevention of fires, the water-works, the lighting or sewerage system, or the cemetery of the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 20. This section was new in former Village Law.

Editor's note. Each village board, with the exception of the board of sewer commissioners, is authorized to adopt ordinances relating to its department, subject to the approval of the board of trustees.

21. Vulgar language or conduct.—To punish profane, vulgar or obscene language or conduct in any street or public place in the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 21; originally revised from L. 1870, Ch. 291, tit. 8, sec. 18, in part.

Cross references. Violation of ordinances, see post, sec. 93; arrest of disorderly persons, see post, sec. 338.

Editor's note. The conduct described in this and the next three subdivisions was heretofore expressly declared disorderly. Under the revision the conduct is made subject to ordinance. The board may prescribe a penalty, and, in its discretion, also declare the conduct disorderly.

22. Malicious mischief.—To punish the wilful and malicious breaking, marring, injury, removal or defacement of any building, fence, awning, sign, sign-board, tree, shrubbery or other ornamental thing in the village, the removal from or piling up before any door or on any sidewalk or street of boxes, casks or other things, the tearing down of any notice or hand-bill lawfully posted, or inciting or inducing dogs to fight in any of the streets or public places in the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 21; originally revised from L. 1870, Ch. 291, tit. 8, sec. 18, in part.

Cross references. Violation of ordinances, see post, sec. 93; arrest of disorderly persons, see post, sec. 338.

23. False alarm of fire.—To punish the wilful giving of a false alarm of fire.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 23; originally revised from L. 1870, Ch. 291, tit. 8, sec. 18, in part.

24. Conduct at fires.—To punish insubordination or disorderly conduct at fires, the obstruction of the operations of the fire department or the wilful neglect or refusal to obey or the attempt to prevent or to obstruct the execution of the orders of the trustees or officers of the fire department.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 24; originally revised from L. 1870, Ch. 291, tit. 8, sec. 18, in part.

25. Fire-escapes.—To require owners of buildings to erect fire-escapes, when necessary for the safety of occupants; and to compel the owners or occupants of a hotel, factory, theater, opera house, music hall, or other place of amusement, assembly hall, church, literary or charitable institution, to provide doors, windows, stairs, escapes or other means of egress from said buildings; and to regulate the attendance and seating therein.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 25. This section was new in former Village Laws.

26. Posting bills.—To regulate or prohibit the posting of bills.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 89, subd. 26.

This subdivision was new in former Village Law.

27. Accumulation of snow, et cetera, on buildings adjacent to streets.—To compel the owners of buildings adjacent to the streets to prevent the accumulation of snow, ice or water thereon, and to prevent the falling of snow, ice or water from such buildings upon the streets or sidewalks.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 27. This subdivision was new in former Village Law.

28. Powers as to tires on vehicles.—To prescribe the width of tires used on vehicles built to carry or carrying a weight of fifteen hundred pounds and upwards over the streets, alleys and public places of the village and provide penalties for a violation, but such ordinance shall apply only to residents of the village and non-residents regularly engaged in business therein.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 89, subd. 28, as added by L. 1899, Ch. 391.

29. Keeping of swine.—To regulate or prohibit the keeping of swine within the village limits.

Added by L. 1916, Ch. 199, in effect April 12, 1916.

30. Keeping of calves.—To regulate the keeping of calves within the village limits.

Added by L. 1917, Ch. 213, in effect April 19, 1917.

§ 90-a. Building and sanitary codes.

The board of trustees of any village, whether organized under a general or special act, may, by a majority vote of all of said board at a meeting thereof duly held, taken and recorded by calling the ayes and noes adopt an ordinance to be known as the building code, which shall provide therein rules and regulations for the construction, alteration, removal and inspection of all buildings or structures erected or to be erected within the limits of the village, providing therein and regulating thereby the plans and means of all such construction, alteration or removal of all of such buildings and structures. The board of trustees of any village of the first class or of any village in a county of less than one hundred and fifty thousand population, which adjoins a city of the first class by a majority vote of all of said board, at a meeting thereof duly held, taken and recorded by calling the ayes and noes may also adopt an ordinance to be known as the sanitary code, which shall provide therein rules and regulations for the construction, alteration, removal and inspection of all plumbing and drainage systems in buildings now erected or to be erected upon property within the limits of the village, providing therein and regulating thereby all such construction, alteration or removal of all such plumbing and drainage, and the licensing of plumbers to do such work. The board of trustees shall have authority to provide penalties or punishments for disobedience to any such ordinance in the manner prescribed by section ninety-three of this chapter and may appoint and remove such inspectors and examiners as may be required to properly execute the provisions of said ordinances, and shall possess authority to alter and amend said ordinances from time to time and to issue licenses to plumbers and builders by a like vote. Nothing herein contained shall impair any other power conferred by law upon a board of trustees in relation to the same or kindred matters.

Derivation. Added by L. 1910, Ch. 202, and amended by L. 1915, Ch. 36, and L. 1916, Ch. 397, in effect May 2, 1916.

§ 91. Licensing occupations.

The board of trustees of a village may, by ordinance, prohibit the pursuit or exercise without a license, of any of the following trades or occupations within the village, to wit:

1. The running of public carriages, cabs, hacks, carts, drays, express wagons, or other vehicles for the transportation within the village, for hire, of persons or property, soliciting or running

therefor, or for hotels; auctioneering, hawking and peddling, except the peddling of meats, fish, fruit and farm produce.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 90, subd. 1; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 19, in part.

"Peddler" defined to be one who travels about the country with merchandise for the purpose of selling it. *Village of Stamford v. Fisher*, 63 Hun, 123, 17 N. Y. Supp. 609 (1892), aff'd 140 N. Y. 187.

Sale by auction takes place where goods are put up at a certain price and if not taken, are offered again at a lower price and so on until they are taken or withdrawn. *Village of Deposit v. Pitts*, 18 Hun, 475 (1879).

The business carried on must be clearly within the terms of the ordinance. *Village of Stamford v. Fisher*, 140 N. Y. 187 (1893).

Power not confined to public places, but extends to all places within the corporate limits. *Village of Niagara Falls v. Salt*, 45 Hun, 41 (1887); *Village of Port Jervis v. Close*, 6 N. Y. Supp. 211 (1889).

Common Council may delegate authority to license to the mayor as a duty appropriate to his office. *Bradley v. City of Rochester*, 54 Hun, 140 (1889).

Validity and constitutionality of such ordinances has been established by many judicial decisions. *People v. Mulholland*, 82 N. Y. 324 (1890), aff'g 18 Hun, 548; *City of Brooklyn v. Breslin*, 57 N. Y. 591 (1874); *People v. Thacher*, 42 Hun, 349 (1886); *Village of Deposit v. Pitts*, 18 Hun, 475 (1879); *Village of Ballston Spa v. Markham*, 58 Hun (1890); *Bradley v. City of Rochester*, 54 Hun, 140 (1889); *Jones v. Foster*, 43 App. Div. 33 (1899); such ordinances are strictly construed as in derogation of the common law. *Village of Stamford v. Fisher*, 140 N. Y. 187 (1893).

Ordinance requiring agents of manufacturers to take out license cannot be enforced against an agent of a manufacturer of another state, since it interferes with interstate commerce. *Brennan v. Titusville*, 153 U. S. 239 (1894). This rule does not apply, however, where the goods are shipped into the state and sold directly by agent there. *Emert v. Missouri*, 156 U. S. 296 (1894).

Express companies subject to village ordinance. An express company using vehicles in carrying on its business in a village is subject to an ordinance prohibiting such occupation without a license therefor under this section. *Rept. of Atty.-Gen.* (1911), Vol. 2, p. 570.

Hawking and peddling farm produce by persons who have purchased the same from others and are speculating therein, cannot be prohibited. *Rept. of Atty.-Gen.*, Apr. 25, 1911.

2. The doing of a retail business in the sale of goods of any description, from canal boats, in the canals, or from the lands by the side of such canals and within the boundary lines thereof, within the limits of the village, except products of the farm and unmanufactured products of the forest.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 90, subd. 2; originally revised from L. 1880, Ch. 434.

Consolidator's note. The act of 1880 is repealed by the General City Law, and so far as it relates to cities is incorporated in sec. 9 of that chapter.

3. Circuses, theatres, or other exhibitions or performances, the keeping of billard saloons, bowling alleys, shooting galleries, and other similar places of amusement, for money or hire; or the giving of exhibitions, performances or entertainments in any place where liquor is sold or drunk under a liquor tax certificate.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 90, subd. 3.
Discretionary with mayor whether he shall grant or withhold license.
People v. Thacher, 42 Hun, 350 (1886).

4. The use of any public hall or opera house; but such place shall not be licensed unless it has suitable and safe means of ingress and egress in case of panic or fire.

If any such trade or occupation shall be so prohibited, the board of trustees shall establish uniform fees for licenses therefor, and the president of the village shall issue a license specifying the fee to be paid therefor, to such persons as he shall deem fit and proper for such trade or occupation, but such license shall be refused for any of the occupations in the third subdivision above specified, which shall, in the judgment of the president, be likely to disturb the peace and order of the village, or be immoral or improper. Every such license shall be countersigned by the clerk of the village, who shall keep a record thereof and of the amount of the fee to be paid therefor; and upon presentation of such license to the treasurer of the village, so signed and countersigned, and the payment to the treasurer of such fee, the treasurer shall indorse thereon his receipt of the license fee. The license shall not take effect, until the receipt of the treasurer shall have been indorsed thereon. Any applicant, who shall have been refused such license by the president, may apply to the board of trustees therefor at a meeting thereof; and the same may be granted or refused by the board. The president may suspend any such license, until the next meeting of the board of trustees, and thereupon the said license may be revoked or continued by the board.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 90, subd. 4; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 14, as amended by L. 1882, Ch. 305, subds. 21 and 22, as amended by L. 1878, Ch. 281.

Cross references. Form of license, see post, Form 32.

Revisers' note (1897). The trustees are given the power under the act of 1870 of regulating or preventing certain trades or occupations without a specification of the manner of regulating.

The act of 1883 authorizes villages incorporated by special law to issue licenses to peddlers and auctioneers. This section provides a uniform system of licensing all such occupations, which are not likely to disturb the peace and order of the village, or which are not immoral or improper. The keeping of billiard halls, bowling alleys, shooting galleries, etc., are added to the

occupations specified in the act of 1870. These are contained in many special charters.

Power may be delegated to mayor as a duty appropriate to his office. *Bradley v. City of Rochester*, 54 Hun, 140 (1889).

§ 92. Definition of village ordinances.

A village ordinance includes also a rule, by-law, order or regulation of the board of trustees, or of the board of fire, water, light, sewer or cemetery commissioners, approved by the board of trustees, for the violation of which a penalty is imposed; and each provision of this chapter, relating to the enforcement of an ordinance applies to such a rule, by-law, order or regulation.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 91.

This section was new in former Village Law.

Cross references. Proof of ordinance, see Code Civ. Pro., sec. 941; ordinance must be uniform in application, see General Municipal Law, sec. 80.

Ordinance must conform strictly to the charter. *Cowan v. Village of West Troy*, 43 Barb. 48 (1864).

Rules adopted by the Common Council of a municipal body are not ordinances. *Armatage v. Fisher*, 74 Hun, 167 (1893).

General law on same subject will not render ordinance void. *Polinsky v. People*, 11 Hun, 390 (1877).

Ordinance may be partly void and enforceable as to the remaining part. *Duryee v. Mayor, etc.*, 96 N. Y. 477 (1884).

Time of publication of ordinance cannot be delegated to the discretion of the clerk. *Village of Watkins v. Hillerman*, 73 Hun, 317 (1893).

Ordinance has same force as a statute, *Village of Carthage v. Frederick*, 122 N. Y. 268 (1890); *City of Buffalo v. New York, etc., R. Co.*, 152 N. Y. 276 (1897); *Burger v. Koelsch*, 77 Hun, 44 (1894); and cannot be impeached collaterally, *Consumers Gas Co. v. Congress Spring Co.*, 61 Hun, 133 (1891).

Contracts in violation of ordinance are void, without regard to the knowledge of the contracting parties. *Burger v. Koelsch*, 77 Hun, 44 (1894).

Ordinance must be reasonable. *Village of Carthage v. Frederick*, 122 N. Y. 268 (1890); *City of Brooklyn v. Nassau, etc., R. Co.*, 38 App. Div. 365 (1899), 56 N. Y. Supp. 609; *City of Buffalo v. New York, etc., R. Co.*, 152 N. Y. 276 (1897); *City of Buffalo v. Collins, etc., Co.*, 59 App. Div. 432 (1899), 57 N. Y. Supp. 347. But an ordinance reasonable under one state of facts may be unreasonable as to another. *Ford v. Standard Oil Co.*, 32 App. Div. 596 (1898), 53 N. Y. Supp. 48.

Ordinance need not allege the reasons for its enactment or the exigencies out of which it grew. *Cronin v. People*, 82 N. Y. 318 (1880), aff'd 20 Hun, 137.

Repeal of repealing ordinance revives the former ordinance. *Mayor, etc. v. Broadway, etc., R. Co.*, 97 N. Y. 275 (1884).

§ 93. Violation of ordinances.

The board of trustees of a village may enforce obedience to its ordinances by prescribing therein penalties for each violation

thereof, not exceeding one hundred dollars for any offence. In addition to the penalty the board may also ordain that a violation thereof shall constitute disorderly conduct, and that the person violating the same shall be a disorderly person; and such violation shall constitute disorderly conduct, and such person shall be a disorderly person. An ordinance of a village shall not declare any conduct to be disorderly conduct, or that the person violating the same shall be a disorderly person, if any statute of the state shall declare such conduct to be disorderly or constitute the person a disorderly person. Every such ordinance shall be void in so far as it violates the provisions of this section.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 92; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 27.

Cross references. Proceedings against disorderly persons, see post, sec. 338; action to recover penalties, see post, sec. 339; violation of ordinance a misdemeanor, see post, sec. 345.

Village officials who honestly attempt to enforce ordinances should not be required to pay damages to vindicate an offender who has pleaded guilty of violation of the ordinance. *Jones v. Foster*, 43 App. Div. 33 (1899).

Information for violation of ordinance which does not allege that the act was wilfully and unlawfully done is insufficient to authorize the granting of the warrant. *Fuller v. Redding*, 16 Misc. 634 (1896).

Indictment need not allege the reasons for the enactment of the ordinance. *Cronin v. People*, 82 N. Y. 318 (1880), aff'g 20 Hun, 137.

Where enforcement by penalty is provided that method of procedure is exclusive. *Hettenbach v. New York, etc., R Co.*, 18 Hun, 129 (1879); *Fuller v. Redding*, 16 Misc. 634, 39 N. Y. Supp. 109 (1896).

In action to recover penalty it must clearly appear that the act complained of constituted a violation of the ordinance. *Village of Stamford v. Fisher*, 140 N. Y. 187 (1893).

Injunction not authorized for violation of an ordinance unless such act amounts to a nuisance. *Village of Brockport v. Johnson*, 13 App. N. Cas. 468 (1883); *Village of New Rochelle v. Long*, 75 Hun, 608 (1894).

Ordinance on gambling resorts. A village ordinance which prohibits both the keeping and the use of a place for gambling and provides that a violation thereof shall constitute disorderly conduct and that the offender shall be a disorderly person is not within the inhibition of this section. *People v. Earing* (1911), 71 Misc. 615.

§ 94. Approval by board of ordinances of separate boards.

An ordinance adopted by the board of fire, water, light, or cemetery commissioners for the violation of which a penalty is imposed, must be approved by the board of trustees. Upon its adoption such an ordinance must be certified to the board of trustees, and upon its approval becomes an ordinance of the village with the same force and effect and enforceable in the same manner as if it had been originally adopted by the board of trustees.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 93.

This section was new in former Village Law.

§ 95. When ordinances to take effect.

Every ordinance hereafter adopted or approved by the board of trustees of a village, shall be entered in its minutes, and published in the official paper of the village, and also in each other newspaper actually printed in the village, once each week for two consecutive weeks, and a printed copy thereof posted conspicuously in at least three public places in the village for at least ten days before the same shall take effect, and an affidavit of the publication and posting thereof shall be filed with the clerk. But such an ordinance shall take effect from the date of its service as against a person served personally with a copy thereof, certified by the village clerk under the corporate seal of the village, and showing the date of its passage and entry in the minutes.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 94; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 27, in part.

Revisers' note (1897). The original law provides that ordinances shall be posted in three public places in the village ten days before they take effect. There seems to be no reason why it should not take effect immediately against a person receiving personal notice. An ordinance may be passed to suppress a practice which is of daily occurrence, disturbing the peace and good order of the community.

Violation of village ordinance; publication of regulation of speed of motor vehicles; violation of provisions of Highway Law; when ordinance is of no force.

After proof that a proposed ordinance regulating the speed of motor vehicles within the limits of a village had been filed with the secretary of state, as required by section 288 of the Highway Law, more than thirty days before defendant's alleged violation of said ordinance and that it was published in a newspaper in the village for at least twenty-nine days, and no evidence being offered to show that said newspaper was the official village paper or that it was the only newspaper published in the village, or that copies of the ordinance were posted in at least three public places as required by the Village Law, the ordinance is of no force and effect and defendant's conviction thereunder must be set aside and his fine of fifty dollars remitted.

By section 200 (9) of the Highway Law "any person violating any of the provisions of any section of this article * * * for which violation no punishment has been specified, shall be guilty of a misdemeanor punishable by a fine of not exceeding twenty-five dollars." Held, that a fine fixed by said ordinance at a sum not over fifty dollars was illegal and beyond the power of the court to impose. *People v. Chapman* (1914), 88 Misc. 469, 152 N. Y. Supp. 204. See also, *Huddy on Automobiles*.

ARTICLE V.

FINANCES.

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§ 100. Fiscal year.

The fiscal year begins on the first day of the calendar month in which the annual election is to be held as provided in section fifty-five of this act and ends on the last day of the calendar month preceding such annual election. No expenditures shall be made, nor indebtedness incurred, by the village, during the

See Cumming & Webster's New York Tax Law, also Gilbert's Supervisor's County and Town Officers' Manual.

first month of the fiscal year, except for current expenses. The term "assessors" as used in this article includes the board of trustees of a village which has no separate board of assessors.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 100.

Amended by L. 1909, Ch. 472, in effect March 1, 1910.

This section was new in former Village Law.

Cross references. Election of assessors, see ante, sec. 48.

§ 101. Village funds.

Village funds are classified as follows:

1. The street fund, composed of the poll tax, and all moneys received from taxation or otherwise for the construction, care or maintenance of bridges, streets, crosswalks or sidewalks, the paving and grading of streets, and for the care and maintenance of public parks and squares.

2. The water fund, composed of all money received from taxation or otherwise for supplying the village with water under a contract therefor, or for the purchase, acquisition, construction, care, extension or maintenance of a water-works system, all water rents, all sums received from assessments for fire protection or for the sale of water to be used outside the village, and penalties recovered for violations of the ordinances of the department.

3. The light fund, composed of all moneys received from taxation or otherwise for supplying the village with light under a contract therefor, or for the purchase, acquisition, construction, care, extension or maintenance of a lighting system, light rents and penalties recovered for violations of the ordinances of the department.

4. The sewer fund, composed of all moneys received from taxation or otherwise for the construction, care, extension and maintenance of a sewer or a sewer system, or for the purchase or acquisition of real property therefor.

5. The cemetery fund, composed of all moneys received from taxation or otherwise for the purchase, acquisition, construction, care and maintenance of a cemetery, all moneys received from the sale or use of cemetery lots, and all penalties recovered for violations of the ordinances of the department.

6. The water sinking fund, composed of all sums set apart by the board of water commissioners for that purpose, with all interest or other income thereon.

7. The light sinking fund, composed of all sums set apart by the board of light commissioners for that purpose, with all interest or other income thereon.

8. The general fund, composed of all moneys received from taxation or otherwise for a purpose not specified in either of the foregoing subdivisions, nor included in any other fund.

9. A special fund may also be created from time to time, com-

posed of a sum set apart as directed by a proposition, or by the board of trustees, for a purpose not otherwise specified in this section. When all charges against such special fund have been paid, the surplus, if any, may be transferred to the general fund.

Expenditures for a purpose specified in either subdivision must be made from the fund therein described. The expense of acquiring real property for the laying out, alteration or widening of a street, or for a public park or square, and the compensation therefor, are a charge upon the general fund.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 101.

This section was new in former Village Law.

Cross references. Investment of sinking fund, see post, sec. 127.

Editor's note. This section makes no express provision for a fire fund or a police fund. If desired, however, such a fund could probably be established under subdivision 9 as a special fund.

Keeping in separate fund of proceeds of bonds issued for village hall fund. Village of Bath v. McBride (1917), 221 N. Y. 231, rev'g 163 App. Div. 714.

§ 101-a. Application of surplus moneys of a department.

If there shall be outstanding no obligations of the village on account of a particular department and if after the payment of the current expenses of such department there shall remain a surplus in the fund of that department such surplus may be applied to the payment of any existing obligation of the village or transferred to the general fund. (Added by L. 1916, Ch. 52, in effect March 20, 1916.)

Application of section. (Opinion of State Comptroller, June 30, 1916), 9 State Dept. Rep. 508.

A surplus left in a special fund created for the purchase of a lot on which to erect a fire house should be transferred to the general fund.

The village board may create a special fund for the erection of a fire house and may reappropriate from the general fund the surplus transferred from the special fund. (Opinion of State Comptroller, Feb. 11, 1916), 8 State Dept. Rep. 594.

§ 101-b. Transfer of surplus money from one fund to another.

The moneys in any village fund specified in section one hundred and one of this chapter, in any fiscal year, in excess of an amount sufficient to pay bonds and obligations, for which the fund was provided, theretofore due or to become due within such year, including interest, and in excess of any amount required to be set apart in a sinking fund to meet bonds or obligations or future expenses of any department, may be transferred by the board of trustees of the village to any other village fund. (Added by L. 1918, Ch. 643, in effect May 13, 1918.)

§ 102. Annual financial statement.

The board of trustees shall, after the close of each fiscal year, and at least ten days before the next annual election, make a statement of the total amount of village taxes estimated by them as necessary to be raised during the then next fiscal year, specifying the amount for each fund. The board shall cause the annual report of the treasurer for the last preceding fiscal year and such statement made by them, to be published and posted for at least one week prior to the annual election, in the same manner as the notice of such annual election.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 102, originally revised from L. 1870, Ch. 291, tit. 3, sec. 11, as amended by L. 1891, Ch. 160.

Cross references. Report of treasurer, see ante, sec. 81.

Revisers' note (1897). Under section 11 of title III of the act of 1870, the trustees are to make a statement of the expenditures, etc., during the pre-

ceding fiscal year. Under the revision section 81 the treasurer is to make such statement. It is, therefore, provided by section 102 of the revision, that the board of trustees shall make a statement of the amount estimated by them as necessary for the ensuing year, and is also required to print and publish therewith the statement of the treasurer. Under section 103 of title II of the act of 1870, such statement is required to be published at least fifteen days before the election. As the election occurs on the third Tuesday in the month, which may be on the 15th, and the fiscal year, under the plan of the revision, ends on the last day of February, there will not be sufficient time for such publication, which is fixed by section 102 of the revision at one week.

§ 103. Poll tax.

Unless a village decides not to impose a poll tax, all men, between the ages of twenty-one and seventy years, residing in the village, are liable to an annual poll tax of one dollar, except exempt firemen, active members of the fire department of the village, honorably discharged soldiers and sailors, who lost an arm or a leg in the service of the United States during the late war, or who are unable to perform manual labor by reason of injury received or disabilities incurred in such service, clergymen and priests of every denomination, paupers, idiots and lunatics. No personal property is exempt from levy and sale in the collection of a poll tax or the penalty for the non-payment thereof, either upon a village tax warrant or upon an execution issued upon a judgment for the recovery of such poll tax or penalty. The board of trustees of a village may adopt ordinances not inconsistent with law for the enforcing of the collection of such poll tax by action, or may provide by ordinance for the imposition of a penalty in case of a failure to pay such poll tax. A proposition may be adopted at an annual election to the effect that no poll tax be thereafter imposed in the village. Such proposition may be revoked at an annual election, and if revoked, the poll tax shall be imposed as if the proposition for exemption had not been adopted.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 103, as amended by L. 1906, Ch. 496; originally revised from L. 1870, Ch. 291, tit. 3, sec. 16, in part, as amended by L. 1876, Ch. 317.

Revisers' note (1897). This section adds to the list of exemptions the persons who are exempt under the Highway Law, section 33, from a poll tax in towns. It also extends the age limitation from sixty to seventy years, in harmony with the Town Law.

Editor's note. The Legislature amended this section so as to allow a village to determine not to impose a poll tax.

§ 104. Annual assessment-roll.

The assessors of a village shall, on or before the first Tuesday of the third month of the fiscal year, prepare an assessment-roll of the persons and property taxable within the village in the same manner and form as is required by law for the preparation of a town assessment-roll. They shall also enter on such roll the names of all persons liable to a poll tax. The assessors of a village of the third or fourth class, included wholly within a town, and in any village wholly within a town where no assessors are elected or appointed, the trustees acting as assessors, may, and upon the adoption of a proposition therefor at an annual election, shall adopt the assessment-roll of the town of the last preceding year as the basis of their assessment, so far as practicable. If such town roll be adopted the assessors shall copy therefrom a description of all real property of the village and the value thereof as the same appears thereon; also all personal property and the value thereof assessed on such town roll to residents of the village, or to corporations taxable therefor therein, together with the names of the persons or corporations, respectively, to which such real or personal property is or should be assessed. Where the town assessment-roll is adopted and the valuation of any taxable property can not be ascertained therefrom, or where the value of such property shall have increased or diminished since the last assessment-roll of the town was completed, or an error, mistake or omission on the part of the town assessors shall have been made in the description or valuation of taxable property, the assessors shall ascertain the true value of the property to be taxed from the best evidence available. (Amended by L. 1909, Ch. 472, and L. 1918, Ch. 461, in effect May 6, 1918.)

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 104, as amended by L. 1905, Ch. 300; originally revised from L. 1870, Ch. 291, tit. 6, sec. 1, as amended by L. 1889, Ch. 246.

Cross references. Form of assessment-roll, see post, Form 33; preparation of town roll, see Tax Law, sec. 21; exemption of gas and electric companies, see Transportation Corporation Law, sec. 61.

Editor's note. This section was materially amended by the Legislature. As originally proposed, it required the town assessment-roll to be taken as the basis of assessment. The editors have not included in this compilation

the provisions of the Tax Law in relation to the preparation of town assessment-rolls, upon the theory that assessors must be familiar with all the provisions of the Tax Law in relation to property taxable, exemptions, place of taxation, etc.

For manner of assessing property belonging to the city of New York and located in a village, see Laws of 1893, chap. 185.

Laws of 1871, chapter 171, requires town assessors to separately assess real property lying partly within and partly without the village.

The Transportation Corporations Law, section 61 (Laws of 1890, chap. 566), authorizes the municipal authorities of a village to exempt a gas or electric company doing business in the village from taxation on its personal property for a period of three years from the date of its organization.

Power to assess real and personal property within the corporate limits, whether the owners of such property are residents or not, does not require assessment against the owner by name, but such property may be assessed in the hands of an agent. *People v. Willis*, 133 N. Y. 383 (1892).

Village not a tax district within the definition contained in the Tax Law (L. 1896, Ch. 908, sec. 2, subd. 1). *People v. Gray*, 185 N. Y. 196 (1906), rev'g 109 App. Div. 116; 95 N. Y. Supp. 825.

Powers of village assessors not the same as that of town assessors, acting under a special law regarding a certain species of property. *People v. Willis*, 133 N. Y. 383 (1892).

The question whether property is taxable must be determined as of the date when the assessment-roll is required to be prepared. *People v. Keefe*, 119 App. Div. 713 (1907), 104 N. Y. Supp. 154.

Entry upon assessment-roll should describe property liable and the assessment will be void for want of adequate description. *Noxon v. City of New Rochelle*, 116 N. Y. Supp. 822 (1909), following *Lawton v. City of New Rochelle*, 114 App. Div. 883, 100 N. Y. Supp. 284; *Allter v. Village of St. Johnsville*, 130 App. Div. 297 (1909), 114 N. Y. Supp. 355.

Assessment against firm name instead of the individual owner is too indefinite. *Allter v. Village of St. Johnsville*, 130 App. Div. 297 (1909), 114 N. Y. Supp. 355.

Part of farm within village may be assessed as village property although the owner's residence is on that portion which lies without the village boundaries. *People v. Gray*, 185 N. Y. 196 (1906), rev'g 109 App. Div. 116; 95 N. Y. Supp. 825.

Assessors in villages of third class must complete, verify and file the assessment-roll on or before the second Tuesday in May, and they have no power thereafter to increase an assessment. *Matter of the City of New York v. Smith*, 61 App. Div. 407 (1901), 70 N. Y. Supp. 702.

Action to vacate will not lie where assessment is void upon its face. *Allter v. Village of St. Johnsville*, 130 App. Div. 297 (1909), 114 N. Y. Supp. 355.

Description of property. A village assessment-roll which describes property taxed merely as "House and Lot No. 54" without referring to any authenticated record, map plot or the like, is fatally defective. *Rupert v. Village of North Pelham* (1910), 139 App. Div. 302, 123 N. Y. Supp. 944.

Preparation of assessment-rolls. While the provisions of this section require assessors to prepare assessment rolls in substantially the same form as that provided for by section 21 of the Tax Law those columns which are manifestly inapplicable to villages may be omitted. Rept. of Atty.-Gen. (1911), Vol. 2, p. 639.

§ 105. Meeting of assessors to hear complaints.

The assessors shall at least one week before the first Tuesday of the third month in the fiscal year, cause a notice to be published in each newspaper published in the village, and posted in

at least five conspicuous public places in the village, that on such first Tuesday of the third month of the fiscal year, as the case may be, at a specified place and during four consecutive hours to be named, they will meet for the purpose of completing the assessment-roll, and of hearing and determining complaints in relation thereto, and they may adjourn such meeting from day to day, not later than Saturday then next succeeding. A copy of such assessment-roll shall be deposited with the village clerk at least five days prior to such first Tuesday of the third month of the fiscal year, as the case may be, and shall be open for inspection by the inhabitants and taxpayers of such village at all times during business hours of such days. Village assessors possess all the powers and are subject to all the duties of town assessors in hearing and determining complaints as to assessments. If the village is one in which the assessment-roll is required to be prepared by copying from the assessment-roll of the town, the assessors at such meeting shall not hear any complaint as to a valuation which has not been changed, except upon proof of a change in the property or in the ownership or valuation since the town assessment was completed. (Amended by L. 1909, Ch. 472, and L. 1918, Ch. 461, in effect May 6, 1918.)

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 105, as amended by L. 1907, Ch. 158; originally revised from L. 1870, Ch. 291, tit. 6, sec. 3.

Cross references. Meeting to hear complaints, see Tax Law, sec. 37; notice of meeting to hear complaints, see post, Form 34; affidavit of application to correct assessment, see post, Form 35.

Objections not presented at this time will not be considered on appeal. *People v. Gray*, 185 N. Y. 196 (1906), rev'g 109 App. Div. 116; 95 N. Y. Supp. 825.

Taxpayer has right to notice and hearing before a valid tax can be imposed. Such right contemplates the opportunity to attend and be heard before the officers or board who impose the tax and adjust or correct the same. *Trumbull v. Palmer*, 104 App. Div. 51 (1905).

Literal compliance with law requiring notice of time and place for review is not necessary where notice was in fact given. *Bell v. City of Yonkers*, 78 Hun, 196 (1894), 28 N. Y. Supp. 947.

§ 106. Completion and verification of assessment-roll.

When the assessors, or a majority of them, shall have completed the village assessment-roll, they shall severally make, subscribe

and attach to such roll, an oath, in substantially the same form as is required of town assessors by the tax law, if such roll was originally prepared by them; or if such roll was prepared by copying from the assessment-roll of the town, an oath, to the effect that such roll contains, to the best of their knowledge and belief, a true statement, of the property, persons and corporations liable to assessment and taxation within the village, as the same appears upon the assessment-roll of the town in which the village is situated, and, if in making such assessment the valuation of any property has been changed, or any new additional assessment has been made, that in changing such valuation or in making such new or additional assessment, they have estimated the value of the real estate at the sums which a majority of the assessors have decided to be the full value thereof, and that the personal property so assessed is assessed at the full value thereof, according to their best knowledge and belief. The roll as so completed and verified shall be filed with the village clerk, on or before the second Tuesday in the third month of the fiscal year. (Amended by L. 1909, Ch. 472, and L. 1918, Ch. 461, in effect May 6, 1918.)

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 106; originally revised from L. 1870, Ch. 291, tit. 6, sec. 3.

Cross references. Oath to roll, where originally prepared by assessors, see post, Form 36; oath to roll, where copied from town roll, see post, Form 37; oath required of town assessors by Tax Law, see Tax Law, sec. 38.

It is duty of board of trustees acting as such to complete the village assessment-roll. Village of Upper Nyack v. Jewett, 86 App. Div. 254 (1903), 82 N. Y. Supp. 838; *aff'd* 181 N. Y. 514.

Assessment-roll must be completed within the time provided by statute and the assessors have no power thereafter to increase an assessment. Matter of City of New York v. Smith, 61 App. Div. 407 (1901).

Burden of proof that assessors did not take the proper oath before proceeding to make the assessment rests upon the person seeking to invalidate the assessment on that ground. Hooker v. City of Rochester, 30 N. Y. Supp. 297 (1893).

Assessment-roll including local improvement assessment is unauthorized as the assessment-roll and tax levy are entirely distinct. Allter v. Village of St. Johnsville, 130 App. Div. 297 (1909), 114 N. Y. Supp. 355.

Assessment-roll when completed stands as a judgment, and so long as the same remains in force no action will lie to recover back a tax, even though payment was enforced by levy and sale of the property. Sherman v. Trustees of Clifton Springs, 27 Hun, 390 (1882).

§ 107. Failure to hold meeting.

If the meeting for completing the village assessment-roll and hearing complaints in relation thereto is not held on the first Tuesday in the third month of the fiscal year, as the case may be, each of the assessors shall forfeit to the village ten dollars, and they shall, by resolution, fix another time therefor, and give notice thereof at least ten days prior thereto by publication thereof, in the same manner as for the first meeting, and by posting copies thereof in at least five conspicuous places in the village. The assessors shall meet accordingly at the time and place appointed, shall hear complaints, complete the assessment-roll, and file the same on or before the fourth day after such meeting, in the same manner as near as may be as if their annual meeting had been held as required by law. If the completed assessment-roll shall not be so filed on or before the fourth day after the meeting for completing the same and hearing complaints in relation thereto, in either case, the assessment shall not on that account be invalid, but such roll shall be filed in like manner as soon as may be thereafter and each assessor shall forfeit to the village five dollars for each day of such neglect. (Amended by L. 1909, Ch. 472, and L. 1918, Ch. 461, in effect May 6, 1918.)

Derivation. Former Village Laws (L. 1879, Ch. 414), sec. 107.
This section was new in former Village Law.

§ 108. Notice of completion of annual assessment-roll.

After completing and filing the annual assessment-roll, and on or before the third Tuesday in May the assessors shall cause notice thereof to be published at least once in the official paper, if any, and copies of such notice posted in not less than five public places in the village, specifying the date of filing, and that the same will remain on file with the clerk, subject to public inspection, for fifteen days after the date of such notice. (Amended by L. 1909, Ch. 472; L. 1913, Ch. 378, and L. 1918, Ch. 461, in effect May 6, 1918.)

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 106; originally revised from L. 1880, Ch. 269, sec. 9, in part, which was repealed by the Tax Law.

Cross references. Notice of completion of assessment-roll, see post, Form 38.

Village tax collector's warrant and his right to levy thereunder are not affected by the failure of the village assessors to post and publish, for fifteen days, the statutory notice relative to the completion and filing of the assessment-roll; and the warrant protects him, although he had notice of the failure of the assessors, and although the warrant was delivered to him forthwith and before the fifteen days had expired. *Clark v. Smith*, 31 Misc. 490 (1900).

§ 109. Certiorari to review assessment.

An application for a writ of certiorari to review the assessment-roll may be made within such fifteen days in the manner provided by the tax law.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 109; originally revised from L. 1880, Ch. 269, secs. 1, 9, repealed by Tax Law.

Cross references. Proceedings for certiorari, see Tax Law, secs. 290-295.

Objections not presented to the board of assessors on grievance day cannot be considered on appeal from an order affirming a judgment vacating an assessment in a certiorari proceeding under the Tax Law. *People v. Gray*, 185 N. Y. 196 (1906), rev'g 109 App. Div. 116; 95 N. Y. Supp. 825.

Right of review by certiorari does not dispense with the original requirements as to notice and hearing upon assessment. *Trumbull v. Palmer*, 104 App. Div. 51 (1905).

This section is permissive in so far as it permits application to be made within fifteen days, but does not permit one to be made thereafter. *People v. Dimond*, 122 App. Div. 459 (1907), 106 N. Y. Supp. 832.

Even where void assessment cannot be reviewed if petition is not presented within fifteen days after completion of the roll. *People v. Dimond*, 122 App. Div. 459 (1907), 106 N. Y. Supp. 832.

§ 110. Annual tax levy.

Upon the expiration of such fifteen days, the board of trustees shall levy the tax for the current fiscal year, which must include the following items:

1. Such sums as shall have been authorized by the last preceding annual election, or by a special election for which a special tax warrant has not been issued.

2. The total amount of the indebtedness of the village lawfully contracted, which will become due and payable during the current fiscal year.

3. Such sum as the board deems necessary in addition to the poll tax to meet the expenditures from the street fund for the current fiscal year, not exceeding one-half of one per centum of the total valuation of the property assessed upon the annual assessment-roll of the last preceding year.

4. Such additional sums as shall be deemed necessary to meet all other expenditures of the village for the current fiscal year, not exceeding one-half of one per centum of such total valuation.

5. The poll tax.

6. In all villages which shall, pursuant to section fifty-two of this act, hereafter adopt a proposition to hold their annual election in June, the board of trustees of such village shall in the first annual tax levy, after the adoption of such a proposition, include such additional sums as shall be deemed necessary to meet all expenditures of the village for the period from March first to June first next preceding such annual tax levy, but not exceeding one-quarter of one per centum upon such total valuation, and in all villages which have heretofore adopted such a proposition, the board of trustees shall include in the first annual tax levy after this act takes effect, such additional sums as shall be deemed necessary to meet all expenditures of the village for the period from March first to June first next preceding such annual tax levy, but not to exceed one-quarter of one per centum upon such total valuation.

If by reason of an actual or alleged error or defect in the assessment-roll of the last preceding fiscal year, any taxes authorized and intended to be levied thereby, are not paid, or if a special tax warrant has been returned and taxes levied therein remain unpaid, the amount thereof may be levied upon the same property or to the same person upon the annual assessment-roll of the current year. The tax roll shall be made in duplicate, and upon its completion, the clerk shall endorse upon each duplicate the date thereof. The completed assessment-roll shall be presumptive evidence of the facts therein stated.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 110; originally revised from L. 1870, Ch. 291, tit. 6, sec. 1, as amended by L. 1889, Ch. 246; subdivision 6 added by L. 1909, Ch. 472, in effect March 1, 1910. Distinction between ordinary and extraordinary expenditures abolished.

Cross references. Certificate to be included, see post, sec. 158; raising money for charitable institutions, see General Municipal Law, sec. 87.

Vote of electors is a condition precedent to a levy of the taxes prescribed in subds. 2 to 5. Rept. of Atty.-Gen. (1903), 307.

Strict construction. Statutes by which a power to levy an assessment and taxes is delegated must be strictly complied with in every particular. Rept. of Atty.-Gen. (1896), 133.

Failure to include in assessment-roll the annual poll tax required by section 103 (see ante), is a material violation of the Village Law, and renders

the tax levy void. *Trumbull v. Palmer*, 42 Misc. 628 (1905), 104 App. Div. 51

Village may tax property of existing water system to maintain a municipal water system. In *re Beauty Springs, etc., Co.*, 118 N. Y. Supp. 659 (1909) citing *Skaneateles, etc., Co. v. Village of Skaneateles*, 161 N. Y. 154.

The annual rent due on a lighting contract is a current operating expense which must be included in and as a part of the sum to be levied pursuant to subdivision 4 of this section, and is not "an indebtedness" lawfully incurred within the meaning of that term as used in subdivision 2 of said section (*Opinion of State Comptroller*, June 26, 1916), 9 State Dept. Rep. 500.

§ 111. Special assessment and levy.

If the board of trustees is authorized by a special election to levy a special tax, the clerk shall forthwith prepare a copy of the annual assessment-roll, and the same shall be revised and corrected by the board of trustees as shall be just, for the purposes of the assessment of such tax upon the taxable property and persons of the village, and as so corrected and revised shall be filed with the clerk on or before the second Tuesday after such special election. Thereupon the like proceedings shall be taken, as nearly as may be, for completing such assessment-roll, hearing and determining complaints in relation thereto, which must be on a notice of not less than five nor more than ten days, filing the roll when completed, giving notice thereof, and levying the special tax so authorized, as in the case of the annual assessment-roll and the levy of the annual tax.

§ 112. Lien of tax.

An annual or special tax is a lien prior and superior to every other lien or claim, except the lien of an existing tax or local assessment, on real property upon which it is levied from the date of the delivery to the collector of the warrant for the collection thereof, until paid or otherwise satisfied or discharged.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 112; originally revised from L. 1870, Ch. 291, tit. 8, sec. 20.

The provision that the tax shall be a superior lien was new in former Village Law.

Tax is not imposed upon land but upon person on account of his ownership of land. *Rundell v. Lakey*, 40 N. Y. 513 (1869).

Uncollected taxes become a lien against the land. *Everson v. City of Syracuse*, 29 Hun, 485 (1883).

As tax is lien on real estate a taxpayer may maintain an action to have the assessment declared void as a cloud upon the title. *Trumbull v. Palmer*, 104 App. Div. 51 (1905).

§ 113. Lien of assessment for local improvement.

An assessment for paving, sewers, fire protection, constructing or repairing sidewalks, sprinkling streets, trimming trees, or

keeping sidewalks or streets cleared of weeds, ice, snow or other accumulations, is a lien prior and superior to every other lien or claim, except the lien of an existing tax or local assessment, upon the real property improved or benefited, from the date of the final determination of the amount thereof, until it is paid or otherwise satisfied or discharged. No real property is exempt from assessment for a purpose specified in this section, except as provided in section five of chapter two hundred and seventy-three of the laws of eighteen hundred and sixty-six, entitled "An act authorizing the incorporation of associations to erect monuments to perpetuate the memory of soldiers who fell in defense of the union," as amended by chapter two hundred and ninety-nine of the laws of eighteen hundred and eighty-eight.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 113, as amended by L. 1898, Ch. 539.

This section was new under former Village Laws.

The amendment of 1898 added the last sentence.

Consolidator's note (1909). The reference in this section has been changed from "L. 1866, Ch. 273, sec. 5" to "Membership Corporation Law, sec. 171" because the act named was consolidated in Membership Corporation Law, sec. 171.

Sidewalk assessment is superior lien to every other lien, excepting taxes or local assessments, from the date of the final determination until satisfied. *Gouverneur Village v. Gouverneur, etc., Ass'n*, 120 N. Y. Supp. 221 (1909).

Land used as cemetery in village is liable for sidewalk assessments. *Gouverneur Village v. Gouverneur, etc., Ass'n*, 120 N. Y. Supp. 221 (1909), S. C. 62 Misc. 534.

§ 114. Warrant to collector.

Upon the completion of a tax levy the clerk shall deliver to the collector one of the duplicate rolls, with a warrant thereto annexed signed by the president and attested by the clerk, under the corporate seal of the village, containing a summary statement of the purposes for which the taxes are levied, the amount thereof for each purpose, and the total amount for all purposes, and commanding the collector to collect the taxes therein levied with his fees, and to return said warrant and roll to the clerk within sixty days after the date of the warrant, unless the time shall be extended. The collector shall give a receipt to the clerk for the warrant and assessment-roll delivered to him. The board of trustees may extend the time for the return of the warrant thirty days beyond the first sixty, and such extension shall not affect the validity of the bond given by the collector and his sureties.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 114; originally revised from L. 1870, Ch. 291, tit. 5, sec. 5, tit. 6, sec. 4; L. 1882, Ch. 226.

Cross references. Collectors warrant, see post, Form 39.

Warrant fatally defective where the amounts are written in by the clerk after it had been signed. *Village of Upper Nyack v. Jewett*, 86 App. Div. 254 (1903), 86 N. Y. Supp. 838; aff'd 181 N. Y. 514.

Officer not protected where the assessment-roll and warrant show on their face that the tax was illegal and void; otherwise where no such defects appear. *Sherman v. Trustees of Clifton Springs*, 27 Hun, 390 (1882).

Renewal of warrant without the consent of the sureties on the collector's bond will not discharge them as they must be deemed to have executed the bond with knowledge of the power of the trustees in this regard. *Village of Olean v. King*, 116 N. Y. 355 (1889).

§ 115. Collection of taxes by collector; notice to be given to non-residents.

Upon receiving the assessment-roll and warrant the collector shall cause a notice to be published at least once in the official paper, if any, and also in each other newspaper published in the village, and posted conspicuously in five public places in the village, stating that on six days specified therein, not less than nine nor more than twenty days after the publication and posting thereof, he will attend at a convenient place in the village, specified in the notice, for the purpose of receiving taxes. A person or corporation who is the owner of, or liable to assessment for, an interest in real property situated and liable to assessment and taxation in a village in which he or it is not actually a resident, may file with the village clerk of such village a notice stating his name, residence and post-office address, or in case of a corporation, its principal office, and a description of the premises sufficient to identify the same, and such notice shall be valid and continue in effect until cancelled by such person or corporation. The village clerk shall, within five days after the delivery of the warrants for the collection of taxes in such village, furnish to the collector of such village, and such collector shall within such time apply for a transcript of all notices so filed and each such collector shall within five days after the receipt of such transcripts mail to each person or corporation filing such notice, at the post-office address stated therein, a statement of the amount of taxes due on such property and the times and places at which the same may be paid. In case such statement shall not be furnished as herein provided, such person or corporation shall not be liable for fees for collection in excess of one per centum. Upon the filing of such notice the village clerk shall be entitled to receive a fee of one dollar from the person or corporation offering such notice, which shall be in full for all services rendered therein. Any person or corporation paying taxes within twenty days from the date of the notice shall be charged with one per centum thereon, and thereafter with five per centum, for the fees of the collector, except as herein provided; provided that in a village in which the compensation of the collector

lector has been fixed by the board of trustees as provided in this act, the taxes may be paid within the said twenty days without additional charge and all taxes in such village remaining unpaid after the expiration of said twenty days shall be increased five per centum, except as herein provided. After the expiration of such twenty days the collector shall proceed to collect the taxes remaining unpaid, and for that purpose he possesses all the powers of a town collector. The laws relating to town collectors shall also, so far as consistent with this chapter, apply to the collection of village taxes.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 115; originally revised from L. 1870, Ch. 291, tit. 5, sec. 6.

The provision as to service of notice on corporations was new in former Village Law.

Amended by L. 1913, Ch. 61, and L. 1915, Ch. 253. In effect April 9, 1915.

Cross references. Notice of collector, see post, Form 40; notice of sale by collector, see post, Form 41; affidavit of notice of sale, see post, Form 42.

Taxes should be collected from the person against whom they have been assessed. *Everson v. City of Syracuse*, 29 Hun, 485 (1883).

Action will not lie to restrain the collection of a tax on the sole ground that the assessment is illegal. *Trumbull v. Palmer*, 104 App. Div. 51 (1905).

Charter sometimes confers power of town collector upon its officer. *Village of Olean v. King*, 116 N. Y. 355 (1889).

§ 116. Return of collector; payment of taxes to treasurer.

The collector shall pay all taxes received by him, as soon as practicable after receipt thereof, to the treasurer, and, upon the expiration of the time fixed therefor, shall deliver the roll and warrant to the clerk and make and file with him a return, in accordance with the directions of the warrant, showing the total amount of tax paid and each tax unpaid, with the receipt of the village treasurer for all taxes paid to him. The clerk shall thereupon deliver to the treasurer a statement showing the unpaid taxes returned by the collector. All taxes so returned unpaid shall be increased five per centum, and, if remaining unpaid for thirty days after such return, shall bear interest at the rate of ten per centum per annum, from the time of their return as unpaid by the collector to the time of their subsequent payment; and such tax and increase may be paid to the treasurer at any time after such return and before a sale for such unpaid tax of any real property upon which the same may be assessed; but if paid after a notice of sale has been given as provided in this article, the expense of such notice shall be added to the amount of the tax. The provisions of this section, so far as practicable, apply to a village in which taxes are collected by the treasurer.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 116; originally revised from L. 1870, Ch. 291, tit. 6, sec. 5, as amended by L. 1881, Ch. 249, sec. 6.

Collector may decline to collect illegal tax, but having collected it, he may not question the right of the proper authority to receive it, and may be compelled to pay it over. *Village of Olean v. King*, 116 N. Y. 355 (1889).

§ 117. Collection of taxes by treasurer.

In a village which has no collector, the tax-roll and warrant shall be delivered to the treasurer of the village, and the provisions of this article relating to the delivery of a tax-roll and warrant, the extension of the time for the collection of taxes, and the return of such tax-roll and warrant, apply to the roll and warrant so delivered to a treasurer, so far as practicable. Upon the delivery of the roll and warrant to the treasurer, he shall publish in each newspaper actually printed in the village, once in each week for four consecutive weeks, and post in five public places in the village, a notice that such tax-roll and warrant have been left with him for the collection of the taxes therein levied, and designating one or more convenient places in the village where he will receive taxes for thirty days after the first publication and posting of said notice, from nine o'clock in the morning until four o'clock in the afternoon, and that for said thirty days taxes may be paid to him without additional charge; and that all such taxes remaining unpaid after the expiration of said thirty days will thereafter bear interest at the rate of twelve per centum per annum, until the return of the tax-roll and warrant. The treasurer shall attend at the time and place specified in said notice, and may receive such taxes. After the expiration of said thirty days the treasurer shall proceed to collect the taxes remaining unpaid, with interest as herein provided, but without any other fee or charge, and for that purpose be possessed of all the powers of a town collector.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 117.

This section was new in former Village Law.

Cross references. Authority to abolish office of collector, see *Ante*, sec. 43.

§ 118. Return and assessment-roll as evidence.

The return of unpaid taxes by the collector, or treasurer, or a copy thereof certified by the clerk under the corporate seal, shall be presumptive evidence of the facts stated therein. An assessment-roll filed with the clerk, or a copy of the same, or any part thereof, certified by him under the corporate seal, shall be presumptive evidence of the contents thereof, of the regularity of the assessment, and of the right to levy such tax.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 118; originally revised from L. 1870, Ch. 291, tit. 8, sec. 5.

In view of such presumption a taxpayer may maintain an action to have the assessment declared void as a cloud upon the title. *Trumbull v. Palmer*, 104 App. Div. 51 (1905). Such action will not lie where the assessment is void on its face. *Alter v. Village of St. Johnsville*, 130 App. Div. 297 (1909), 114 N. Y. Supp. 355.

§ 119. When real property to be sold for unpaid tax.

If a tax assessed upon real property on an annual or special assessment-roll be returned by the collector or treasurer as unpaid, the board of trustees may direct the treasurer to sell an interest in such property for the unpaid tax in the manner herein prescribed. If such sale be directed, the clerk shall deliver to the treasurer a certified copy of the assessment upon such property, and all entries relating thereto contained in the assessment-roll. Upon receiving such statement, the treasurer shall proceed to sell at public auction an estate in such real property for the shortest period not exceeding fifty years, for which any person will take such property, and pay the tax and the percentage and interest then due, together with the expenses of the sale, which shall include giving the notice of sale, and one dollar for the services of the treasurer.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 119; originally revised from L. 1870, Ch. 291, tit. 6, sec. 6.

Editor's note. This section was added by the legislature. It only applies to villages of the first class, in accordance with section 43, which authorizes such a village to determine that no collector shall be elected therein.

Right to sell for unpaid taxes does not depend upon the treasurer filing his return of such taxes under oath, which is an independent duty. *Glover v. Village of Edgewater*, 3 Sup. Ct. (F. & C.), 497 (1874).

§ 120. Notice of sale.

Notice of the sale shall be published in the official newspaper once in each week for at least four consecutive weeks and posted in at least five conspicuous places in the village, and a copy thereof served on the owners of such real property at least three weeks before the sale. The notice of sale shall contain a brief description of the property and a brief statement of the facts authorizing the sale, and the time and place thereof.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 120, as amended by L. 1904, Ch. 34; originally revised from L. 1870, Ch. 291, tit. 6, sec. 6.

§ 121. Certificate of sale.

All such sales shall be for cash, and upon payment by the purchaser, the village treasurer shall deliver to him a certificate of the sale, signed and acknowledged in the same manner as a deed to be recorded, stating the amount paid by the purchaser, the date of sale and payment, and a description of the real property sold. The certificate of sale may be recorded in the county clerk's office of each county in which any part of the property is situated, in the same manner and with the same effect as a deed, and if so recorded within two years after the tax became a lien on the property, the recording of such certificate shall have the same effect as the recording of a deed, to give the certificate priority over every interest therein or lien thereon acquired subsequent to the lien of the tax; but, unless such certificate is recorded within such time, it shall be void as to such other interest or lien.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 121; originally revised from L. 1870, Ch. 291, tit. 6, sec. 7.

See *Hieinbothem v. Village of North Pelham* (1911), 144 App. Div. 698, 129 N. Y. Supp. 715.

§ 122. Purchaser entitled to possession.

Upon the receipt and recording of such certificate, the purchaser or other owner of the certificate shall be entitled to immediate possession and enjoyment of such real property as against all persons having any title to, interest in, or lien upon the property at the time the tax became a lien thereon, and against all persons deriving any title to, interest in, or lien upon, such property, while the tax was a lien thereon, and to retain possession thereof during the existence of the estate purchased, unless such real property is redeemed from such sale.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 122; originally revised from L. 1870, Ch. 291, tit. 6, sec. 8.

§ 123. Enforcement of right to possession.

The purchaser or other owner of the certificate may enforce his right to possession by summary proceedings, in the same manner as a landlord against a tenant holding over after expiration of term. The purchaser or other owner of the certificate may, before the expiration of the estate purchased, remove all buildings and fixtures which he has erected or placed thereon during its existence, which can be removed without permanent injury to the premises.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec 123; originally revised from L. 1870, Ch. 291, tit. 6, sec. 8.

Cross references. Summary proceedings to obtain possession, see Code Civ. Pro., sec. 2231.

See *Rupert v. Village of North Pelham* (1910), 139 App. Div. 302, 123 N. Y. Supp. 944.

§ 124. Village may bid in property; rights of village.

If there be no other bidder, the treasurer shall bid in the property for the village for the term of fifty years, and a certificate thereof shall be issued accordingly. Thereupon the village has all the rights of a purchaser for such term. Immediately upon the purchase of such property by the village, the president shall take possession thereof and hold, manage, lease or otherwise control the same. He may, in the name of the village, institute and maintain summary proceedings to obtain possession of such property in the same manner as upon the sale of real property upon execution. The treasurer shall open an account with such property, and shall charge to the same the amount of taxes, fees, interest and expenses of the sale, and shall also add all sums subsequently levied upon the property by tax or local assessment and remaining unpaid. The president shall pay to the treasurer during each fiscal year the net amount received from such property, which amount shall be credited in the account. Upon payment to the treasurer of the amount of the taxes or assessments charged against such property, together with the interest at the rate of ten per centum per annum from the time of the sale or the return of a subsequent unpaid tax or assessment, after deducting any credits appearing in the account, the president shall on demand execute and deliver to the person making such payment, an assignment of the certificate of sale, or a satisfaction thereof, as may be required. Whenever the amount received from the use of such property equals the taxes, assessments, expenses and interest then due, the right of the village in such property shall cease and determine, and the president shall thereupon execute and deliver to the owner of the property a release and satisfaction of the interest of the village therein. If upon the execution of an assignment of the certificate, or of a release or satisfaction, a surplus derived from such property remains in the treasury, it shall be paid upon the order of the board of trustees to the person entitled thereto, on demand.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 124.

This section was new in former Village Law.

Revisers' note (1897). An important change has been made in the provisions for the sale of real property for nonpayment of taxes. The present method of selling for a term of years had been retained, but the revision provides that if no bid is made, the property shall be bid in by the village for a term of fifty years. The village is then authorized to control the property, lease the same until the amount of tax due thereon is satisfied, or accept a redemption thereof in the same manner as if the property had been struck off to another purchaser at the sale. It is believed that this provision will obviate much of the difficulty which has arisen in connection with this subject, and will insure to the village the payment of taxes due.

§ 125. Redemption from sale by owner.

A person who at the time of the sale was the owner of the property, or of a vested interest therein, or a lessee thereof, or his assigns, may redeem from the sale, either by paying to the owner of the certificate of sale other than the village, or by depositing with the treasurer for his benefit, the amount paid by the purchaser on such sale, with interest thereon at the rate of ten per centum per annum from the time of the sale to the time of deposit, and the fees lawfully paid to each county clerk for recording the certificate or any assignment thereof in any county in which the property or any part thereof is situated. If such payment be made to the owner of the certificate he shall thereupon execute and deliver to such person making the payment a written cancellation or receipt of the certificate of sale duly acknowledged in the same manner as a deed to be recorded, and specifying the date of the sale, the amount paid thereon, the purchaser thereat, and the property sold. If such payment be made to the treasurer, he shall deliver to the person making it, a written receipt acknowledged in like manner and containing the like specifications. The recording of such cancellation or receipt in each clerk's office of the county in which any part of such property is situated shall effect a cancellation of such certificate of sale.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 125; originally revised from L. 1870, Ch. 291, tit. 6, sec. 7.

§ 126. Actions to recover unpaid taxes.

After the lapse of thirty days from the return of the collector, an action may be maintained, as upon contract, by the village, to

recover the amount of an unpaid tax, together with five per centum thereof, and interest from the time of such return at the rate of ten per centum per annum. A judgment in such action for any amount, when docketed in the office of the county clerk, shall be a lien upon the real property of the defendant, having the same priority, as such lien, as the taxes upon which there was a recovery recovered in such action, and an execution upon the judgment may be issued and enforced against the real property of the defendant regardless of the amount of such judgment. Supplementary proceedings may also be taken for such tax in accordance with the provisions of the tax law, regardless of the amount of such judgment.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 126; originally revised from L. 1870, Ch. 291, tit. 6, sec. 9.

Amended by L. 1917, Ch. 412, in effect May 8, 1917. Said amendment does not affect pending proceedings.

§ 127. Investment of sinking funds.

If at any time the receipts of the water, light or other department, whether accruing from earnings of the particular department, or by reason of moneys appropriated for the use of such department, exceed the amount needed for current expenses, and the payment of principal or interest due or to become due during the next fiscal year, the surplus may be transferred to a fund to be known as the sinking fund of the department, and to be used in the payment of outstanding obligations, or for future expenses of the particular department, for which such fund is created, and in case of the water or light department, may be used for the future expenses of that department if the rents or other income be insufficient for that purpose.

Any village sinking fund may be invested in: 1. The bonds of the United States, the state of New York, or any city of this state, or the bonds, certificates, or other obligations issued by the village for the payment of any lawful indebtedness, which may be purchased at any time from such sinking fund at prices not exceeding the par value, and when so purchased the same shall be immediately cancelled; or

2. Mortgages on improved land owned by the borrower in a county in which such village or a part thereof is located; but before such a mortgage is accepted the board of trustees must be satisfied that the borrower has a title in fee to such lands, and that the same are free and clear of all incumbrances and are worth twice the amount of the sum loaned, exclusive of buildings.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 127; originally revised from L. 1875, Ch. 181, sec. 15, as amended by L. 1896, Ch. 310; L. 1894, Ch. 680, sec. 3. The provision of sec. 15 of the act of 1875 authorizing village to invest in endowment insurance, not re-enacted.

Amended by L. 1915, Ch. 195, in effect April 3, 1915.

A sinking fund may be created from surplus resulting from the operation of municipal water or lighting departments. (Opinions of State Comptroller, June 29 and 30, 1916), 9 State Dept. Rep. 504, 508.

§ 128. Borrowing money generally.

If authorized by a proposition adopted at an election, money may be borrowed by a village upon its bonds or other obligations, payable in future fiscal years. Such proposition shall specify the amount to

be borrowed, the purpose to which the same shall be applied, and shall state, within the limitations prescribed by section one hundred and twenty-nine of this chapter, the time or times when such bonds or obligations shall become due; which proposition shall be printed in full upon the ballot or ballot label, to be voted at such election. No money shall be so borrowed except for the purpose of purchasing, constructing and maintaining the following village improvements:

1. A village or town hall.
2. Fire houses, fire engines, fire alarm system and all other apparatus for use in extinguishing fires.
3. Laying out, widening, altering, grading or paving streets, and for the purchase of a steam roller, stone crusher and engine, and other road making machinery.
4. Sidewalks.
5. Bridges.
6. Water works.
7. Lighting system.
8. Sewerage.
9. Parks or a site for a free public library.
10. Cemeteries.
11. Drains and culverts, the regulation of water courses, ponds and watering places, and the protection of the property within the village from floods, freshets and high water.
12. Public docks or bulkheads.
13. For paying the additional expense of a state or county highway through the village when constructed or improved upon the modified plans of the state commission of highways, as provided by the highway law.

And also for the purpose of paying certificates of indebtedness lawfully issued by the trustees under the provisions of section one hundred and fifty-eight of this chapter. Money may be borrowed in anticipation of taxes levied or to be levied for the current fiscal year, but not in excess of the amount previously estimated by the board of trustees, as necessary to be raised during said fiscal year, nor in excess of the amount of taxes of said fiscal year remaining unpaid at the time such money is borrowed, and the money so borrowed must be payable within such year. No contract shall be made involving an expenditure by the village unless the money therefor has previously been estimated by the board of trustees as necessary to be raised during the then fiscal year, or unless a proposition has been adopted authorizing the board of trustees to raise such money. If a final judgment against a village exceeds one thousand dollars, money may be borrowed for the payment thereof, on the adoption of a proposition therefor at a village election, and bonds or other obligations of the village may be issued for that purpose, payable in instalments or otherwise as prescribed in section one hundred and twenty-nine of this chapter.

14. Plants for the disposal of swill, garbage, ashes and rubbish, or any of them, or vehicles or other appurtenances to be used in connection therewith.

Subd. added by L. 1917, Ch. 27, in effect March 1, 1917.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 128, as amended by L. 1900, Ch. 373; L. 1902, Ch. 280; L. 1903, Ch. 617; L. 1904, Ch. 193; L. 1907, Ch. 59 and L. 1908, Chs. 176 and 509.

This section was new in former Village Law.

Amended by L. 1910, Ch. 4; L. 1911, Chs. 57 and 738. In effect July 21, 1911.

Subdivision 13 added by L. 1910, Ch. 4, in effect Feb. 4, 1910.

Cross references. Legitimate purposes of indebtedness, see Const., Art. 8, sec. 10; restriction on loan of credit, see Const., Art. 12, sec. 1; payments of judgments, see General Municipal Laws, secs. 70, 82, 83; taxpayers' actions, see General Municipal Law, secs. 4-5, Code Civ. Pro., sec. 1926.

Fire commissioner may employ necessary officers and men although the tax for the fire fund has not yet been levied. *People v. Board of Fire Com'rs*, 90 Hun, 515 (1895), 35 N. Y. Supp. 964, aff'd 149 N. Y. 575.

Prohibition of this section does not extend to a case where a village is authorized to contract for a supply of water and light for a term of years. *Port Jervis Waterworks v. Village of Port Jervis*, 161 N. Y. 111 (1896).

Resolution should indicate the installments in which the bonds are to be made payable and which are to be met each year. *Village of Canandaigua v. Hayes*, 90 App. Div. 336 (1904).

The wording of resolution is immaterial so long as it is broad enough to warrant the issue of bonds for the purpose contemplated. *New York, etc., Co. v. Keator*, 62 App. Div. 577 (1901), 71 N. Y. Supp. 185; aff'd 173 N. Y. 235.

Proposition should be submitted in the manner provided by the Village Law and not by the special act under which the village is incorporated. *Village of Canandaigua v. Hayes*, 90 App. Div. 336 (1904), 85 N. Y. Supp. 488.

Resolution providing for gross sum to be used for more than one purpose is invalid since it leaves the taxpayer no choice as between the several objects contemplated. *Village of Hempstead v. Seymour*, 34 Misc. 92 (1901).

Issue of bonds for village hall fund. *Village of Bath v. McBride* (1917), 221 N. Y. 231, rev'g 163 App. Div. 714.

Contract where no money is available. A contract made by the officials of an incorporated village with a certified public accountant to make an examination of past taxes and assessments and various compilations therefrom and to devise a new and efficient system of bookkeeping and accounting and in-

struct the village officers therein is void, where at the time said contract was made there were no funds on hand and no proposition had been submitted to raise the money. *Wakefield v. Brophy* (1910), 67 Misc. 298, 122 N. Y. Supp. 632.

Expenses necessarily incurred by a board of health in suppressing an epidemic, are legal obligations of the village, although in excess of the amount appropriated for expenses. (Opinion of State Comptroller, August 28, 1916), 9 State Dept. Rep. 536.

§ 129. Bonds or other obligations.

Bonds or other obligations of the village shall be signed by the president and attested by the clerk under the corporate seal. They shall become due within thirty years from the date of issue, and, unless the whole amount of the indebtedness represented thereby is to be paid within five years from their date, they shall be so issued as to provide for the payment of the indebtedness in equal annual installments, the first of which shall be payable not more than five years from their date. The amount of each of such annual installments shall be fixed and determined by resolution adopted by the board of trustees of such village and shall be stated in the public notice of the election required to be given. Such bonds shall bear interest at a rate not exceeding five per centum per annum, and shall be negotiated for not less than their par value. They shall be sold on sealed proposals or at public auction upon notice published in the official paper, if any, and also in any other newspaper actually printed in the village, and in such other newspapers as the board of trustees may determine, and posted in three public places in the village, at least ten days before the sale, to the person who will take them at the highest price. They shall be consecutively numbered from one to the highest number issued, and the clerk shall keep a record of the number of each bond or obligation, its date, amount, rate of interest, when and where payable, and the name of the purchaser thereof or the person to whom they are issued, or in whose name they may be registered.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 123.

This section was new in former Village Law.

Amended by L. 1914, Ch. 54, and L. 1915, Ch. 48. In effect March 9, 1915.

Cross references. Municipal bonds generally, see General Municipal Law, secs. 6-12, 20; protection of purchasers, see General Municipal Law, sec. 52-55; form of coupon bond, see post, Form 44.

Effect of amendment of 1914. Bonds or other obligations of a village duly authorized by a village election and heretofore or hereafter issued in accordance with the provisions of section one hundred and twenty-nine of the Village Law, as such section was in force on the date of such election, shall not be affected or invalidated by the amendment of such section by chapter fifty-four of the laws of nineteen hundred and fourteen, but shall be valid and binding obligations on the village, notwithstanding such amendment. (L. 1915, Ch. 48, § 2. In effect March 9, 1915.)

Effect of amendment of 1915. This act shall not affect any action or proceeding now pending in any court nor shall it in any way affect the validity of any bonds or obligations issued after March ninth, nineteen hundred and fifteen, or hereafter issued pursuant to the authority of an election held on or before March fifteenth, nineteen hundred and fifteen, in accordance with the provisions of section one hundred and twenty-nine of the Village Law, as the same was amended by said chapter fifty-four of the laws of nineteen hundred and fourteen, and was in effect at the time of the first publication or posting of the notice of such election, which bonds or obligations shall be valid and binding obligations on the village notwithstanding such amendment. (L. 1915, Ch. 48, § 3, as amended by L. 1915, Ch. 424. In effect April 28, 1915.)

The amendment to section one hundred and twenty-nine of the Village Law made by chapter forty-eight of the laws of nineteen hundred and fifteen shall not apply to bonds or other obligations of a village issued or to be issued pursuant to the authority of any village election held or to be held March sixteenth, nineteen hundred and fifteen, nor affect any such election or the acts and proceedings of the trustees, officers, agents or electors of the village relating thereto; and if any such election shall have been held before this act takes effect, such election and such acts and proceedings are hereby legalized in so far as the same might otherwise be affected by the enactment of such chapter. Such bonds or obligations when issued in accordance with the provisions of section one hundred and twenty-nine of the Village Law as amended by chapter fifty-four of the laws of nineteen hundred and fourteen shall be valid and binding obligations of the village to the same extent and with the

same effect as though chapter forty-eight of the laws of nineteen hundred and fifteen had not been enacted. (L. 1915, Ch. 75, in effect March 16, 1915.)

Effect of amendment of 1915 to this section is to require bond maturities to be so fixed as to provide for the payment of the entire issue in "equal" annual installments. (Opinion of State Comptroller, April 5, 1916), 9 State Dept. Rep. 469.

Bonds can only impose liability in the manner prescribed by the law which authorized their issue. *Germania Sav. Bank v. Village of Suspension Bridge*, 73 Hun, 590 (1893), 26 N. Y. Supp. 98.

Bonds cannot be sold for less than par, and an agreement for sale at par, exclusive of interest is illegal and void. *Village of Fort Edward v. Fish*, 86 Hun, 548 (1895), 33 N. Y. Supp. 784; *aff'd* 156 N. Y. 363.

Village may employ broker in sale and negotiations of its bonds, and pay reasonable compensation for his services. *Armstrong v. Village of Fort Edward*, 84 Hun, 261; 26 N. Y. Supp. 433 (1895), *rev'd* on another point 159 N. Y. 315.

Delivery essential to validity of bond, and until made the bond has no legal inception. *Germania Sav. Bank v. Village of Suspension Bridge*, 73 Hun, 590 (1893); 26 N. Y. Supp. 98.

Taxpayer action lies to restrain the issue of bonds where there is no authority to carry out the proposition for which they have been voted. *Potsdam, etc., Co. v. Village of Potsdam*, 49 Misc. 18 (1905).

§ 130. Limitation of indebtedness.

A village shall not incur indebtedness if thereby its total contract indebtedness, exclusive of liabilities for which taxes have already been levied and obligations issued to provide for the supply of water, shall exceed ten per centum of the assessed valuation of the real property of such village, subject to taxation, as it appeared on the last preceding village assessment-roll.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 130, as amended by L. 1904, Ch. 680.

This section was new in former Village Law.

Cross references. Borrowing money generally, see *ante*, sec. 128; bonds or other obligations, see *ante*, sec. 129.

Indebtedness for water supply should be excluded from the entire indebtedness of the village in determining whether it has reached the ten per cent limitation. *Lines v. Village of Otego*, 91 N. Y. Supp. 785 (1904).

§ 131. Second election upon proposition to raise money.

If the vote at an election upon a proposition to purchase property or to raise a tax or to incur a debt shall be against such proposition, no proposition embracing the same object shall be again submitted before the elapse of ninety days thereafter.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 131.

This section was new in former Village Law.

Amended L. 1910, Ch. 598, in effect June 23, 1910.

Application. This section does not apply where one vote was taken at a village election and the other at a school district meeting. Rept. of Atty.-Gen., April 21, 1911.

Another election upon the same proposition cannot be held until the lapse of ninety days where the vote upon such proposition was a tie. Report of Atty.-Gen., 1913, vol. 2, p. 369.

Not applicable to village of Waterford. The provision, prohibiting the submission of a proposition involving the expenditure of money to the electors before the lapse of ninety days after a previous rejection thereof, is inconsistent with chapter 243 of the Laws of 1859, a special act incorporating the village of Waterford. *O'Connor v. Village of Waterford* (1916), 171 App. Div. 425, 156 N. Y. Supp. 933.

§ 132. Exemption from taxation of firemen and fire companies.

Upon the adoption of a proposition therefor, the members of any fire, hose, protective or hook and ladder company in any village may be exempted from taxation to the amount of five hundred dollars on any assessment for village purposes, in addition to the exemptions otherwise allowed by law, and the real and personal property of any such company may also be exempted from like village taxation.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 132; originally revised from L. 1873, Ch. 397, sec. 11, as added by L. 1879, Ch. 543.

Exemption of volunteer firemen from taxation. Rept. of Atty.-Gen. (1903), 237.

§ 133. Absolute sales for non-payment of taxes.

If a tax or assessment on real property included in an annual or special assessment roll under this chapter, or a tax or assessment which was a lien on real property, or unpaid when the village law took effect, remains unpaid, and the treasurer or collector has made return that he cannot collect the same, the board of trustees may, by resolution, determine that such real property and the entire interest therein, instead of an interest for a term of years, be sold for the collection of such tax or assessment. Such sale shall be for cash, and the notice of sale shall be given in the manner provided by section one hundred and twenty of this chapter, except that the board of trustees may designate one or more newspapers in the village, or in case no newspaper is published in said village, then in an adjoining city or village, in which the notice shall be published. The foregoing provisions of this article in relation to the conduct of a sale and the rights and

remedies in respect to the real property sold shall not be applicable, but the village treasurer and board of trustees shall possess all the powers and be subject to all the liabilities and duties of a county treasurer and board of supervisors, under articles six and seven of the tax law; and such articles shall, so far as practicable, apply to a sale authorized by this section.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 133, as added by L. 1899, Ch. 446, and amended by L. 1904, Ch. 101.

§ 134. Action by holder or* certificate of sale.

In each village in this state adjoining a city situate within a county having a population of four hundred thousand or upwards, excluding New York and Kings counties, the number of such inhabitants to be ascertained by reference to the latest state enumeration, the holder, including such village, of any certificate of sale of land for the non-payment of taxes heretofore or hereafter executed by the village treasurer, may recover the amount paid, stated in said certificate, with all interest, additions and expenses allowed by law, and for that purpose may maintain an action in the supreme court or in the county court of the county in which such village is situate. Jurisdiction of such action is hereby conferred upon said county court.

Derivation. Added by L. 1913, Ch. 234. In effect Apr. 9, 1913.
Amended by L. 1914, Ch. 310, in effect Apr. 11, 1914.

§ 135. Idem; parties to the action; pleadings.

The action provided for in the last section may be commenced at any time after two years from the date that the tax or assessment on account of which the sale was had was payable and all the provisions of law and the rules of practice relating to actions for the foreclosure of mortgages shall apply to the action hereby authorized so far as practicable, except as herein otherwise specially provided. It shall be sufficient for the plaintiff to set forth in his complaint in such action a copy of or the substance of his certificate of sale and the interest, additions and expense claimed by him, with a statement that the same have not been paid and that the plaintiff elects to recover as herein

* So in original.

provided, also that the defendants have or claim to have or may have some interest in or lien upon the property affected by the action. The plaintiff in such action shall include and join therein and may likewise recover upon all prior and subsequent certificates of sale held by him, executed by the village treasurer, relating to the same real property in whole or in part. He may include and join in one action all such certificates of sale relating to two or more separate and distinct parcels of real property belonging to the same person or persons, notwithstanding the fact that other defendants in said action may not be interested or have liens upon all of the parcels included and joined in said action, but the holder of such certificate shall not be compelled or required to consolidate such certificates of sale in one action. He shall make parties to the action the owner or owners of and all other persons interested in the real property affected, or any part thereof, including the holders of all prior and subsequent certificates of sale as shown by the records in the village treasurer's office. He may make parties thereto any municipal corporation which claims an interest in or lien upon the premises described in the complaint or any part thereof, by reason of any tax or assessment levied by said municipal corporation or on account of any other claim which said municipal corporation may have or claim to have against said real property.

The defendants in said action who are the holders of certificates of sale, shall be paid from the proceeds of sale the several amounts paid for the real estate as mentioned and described in the certificates of sale held by them, with all interest, additions and expenses allowed by law, so far as the said proceeds shall suffice to pay the same, in the order of the lawful priority of the liens and the interests of the respective parties in and against the premises as the same may be determined in the action. It shall be sufficient for any such defendant to set forth in his answer the certificate of sale or the substance thereof, with the other allegations in effect as herein provided, with regard to the complaint in the action. A defendant alleging irregularity or invalidity in any tax, assessment or sale shall particularly specify in his answer such irregularity or invalidity.

The court shall have full power to determine and enforce in all respects the rights, claims and demands of the several parties to said action, including the rights, claims and demands of the defendants as between themselves, to direct a sale of such property and the distribution or other disposition of the proceeds of such sale. Any party to the action may become the purchaser on any such sale.

Derivation. Added by L. 1913, Ch. 234. In effect Apr. 9, 1913.

Amended by L. 1914, Ch. 310, in effect Apr. 11, 1914.

§ 136. Certificates of sale; validity.

Every certificate of sale on which the holder shall elect to recover, as herein provided, shall presumptively be valid and shall be presumptive evidence that the sale was regular and valid and that all previous steps and proceedings required by law were duly had and taken. No such certificate of sale and no tax or assessment for the nonpayment of which the same was executed shall be deemed invalid or impaired on account of any irregularity or illegality therein or in the proceedings relating thereto, or by reason of any error or omission in the name of the owner or owners of the land taxed, assessed or sold, or by reason of said lands having been assessed as resident lands or non-resident lands, or otherwise, unless it is shown that the person complaining thereof has suffered actual injury and damage therefrom and then only to the extent of such injury and damage, and no such tax, assessment or certificate of sale shall be deemed invalid or impaired on account of any error or omission in the description of the property assessed or sold if the description is sufficient to identify such property with reasonable certainty.

Derivation. Added by L. 1913, Ch. 234. In effect Apr. 9, 1913.

Amended by L. 1914, Ch. 310, in effect Apr. 11, 1914.

§ 137. Tax sales; conveyance.

The remedy herein provided shall be in addition to all other remedies allowed by law, with regard to certificates of sale, and shall not be dependent upon them or any of them, and may be had whether notice to redeem has been given or not.

A conveyance made pursuant to a judgment in any such action brought as herein provided shall vest in the purchaser in fee simple all the right, title, interest, claim, lien and equity of redemption in or against the premises sold of all the parties to the action and of all persons claiming under them or any or either of them, subsequent to the filing of the notice of the pendency of the action, or whose conveyance or encumbrance is subsequent or is subsequently recorded, except subsequent taxes and assessments and sales on account thereof and except taxes and assessments which were liens on the premises at the time of the filing of a notice of the pendency of the action, but for the nonpayment of which no sale had been had prior thereto and any sales on account of such taxes and each and every one and all of such parties and persons shall be barred and forever foreclosed by the judgment in said action of all right, title, interest, lien and equity of redemption in and to the premises sold or any part thereof, except as aforesaid.

Derivation. Added by L. 1913, Ch. 234. In effect Apr. 9, 1913.

Amended by L. 1914, Ch. 310, in effect Apr. 11, 1914.

§ 138. Proceedings generally; redemption.

The judgment in said action shall designate the village treasurer of such village as the officer to make sale of real property in any action brought as herein provided and said village treasurer for conducting said sale shall receive the same fees and be allowed the same disbursements as are allowed by law to a referee appointed by a judgment in an action to foreclose a mortgage upon real estate. Unless the judgment otherwise directs, the village treasurer making the sale must, out of the proceeds, first pay as a part of the expenses of the sale all taxes and assessments which are liens upon the property sold, but which have become such subsequent to the filing of notice of pendency of the action or for the nonpayment of which no sale had been had prior thereto and redeem the property sold from any sales for unpaid taxes and assessments which were had subsequent to the filing of such notice of pendency and shall pay all unpaid taxes and assessments assessed against said property by any other municipal corporation and redeem such property from any sales for unpaid taxes and assessments made by any other municipal corporation. The plaintiff's costs and allowances, exclusive of disbursements, shall not exceed fifteen dollars if he recovers less than fifty dollars, or twenty-five dollars if he recovers more than fifty dollars and less than five hundred dollars, unless in such a case the court shall, in its discretion, otherwise direct. If the plaintiff recovers more than five hundred dollars, his costs shall be at the rate allowed by law in actions to foreclose mortgages upon real estate. Where the plaintiff shall have joined in the complaint certificates of sale relating to more than one lot or parcel of land, as provided by section one hundred thirty-five, he shall be entitled to tax and recover as costs, in addition to the rates hereinbefore fixed, the sum of five dollars for each such additional lot or parcel of land. The plaintiff shall be entitled to tax and recover the same disbursements as are allowed a plaintiff in an action to foreclose a mortgage on real estate. The costs and disbursements of said action shall be paid from the proceeds of the sale. In the event that the action is compromised before judgment the plaintiff shall be entitled to recover all of his disbursements and one-half of the costs fixed by this section. The village treasurer may have made such tax and title searches of each parcel of land included in any tax sale had by him or any tax sale certificate executed by him, as he deems best in the interest of the village. Any person desiring to redeem any lot or parcel of land from any tax sale shall first pay to the said treasurer the expenses made or incurred by him on account of such search. Whenever the village is the owner and holder of tax liens against or of certificates of sale of premises directed in or by a judgment in any such action to

be sold, the village treasurer may attend such sale and bid thereat such an amount as he deems best in the interest of the village not exceeding, however, the aggregate amount due upon the liens and certificates of sale held by the village, plus the amount of all prior liens and the legal costs and expenses of the action and sale. Any person having any mortgage or other lien upon any lot or parcel of land, or any portion of any lot or parcel of land, included in any action brought under this act, after having commenced an action to foreclose such lien or mortgage, may pay to the plaintiff in the action brought under this act at any time before a sale is had in pursuance of judgment therein, the amount of such plaintiff's claim together with his costs and disbursements and thereupon the plaintiff in said action to foreclose such mortgage or other lien shall be entitled to tax the amount so paid as an item of disbursement to be included in his costs and to recover the same out of the proceeds of any sale of said lot or parcel of land, or portion of such lot or parcel of land, had under the judgment in said action to foreclose such mortgage or other lien, or the referee appointed by the judgment in said last mentioned action to conduct said sale may pay the same out of the proceeds of such sale as part of the expenses of such sale.

Actions instituted hereunder on account of tax sale certificates held by any village shall be commenced by the village treasurer in his discretion or whenever instructed to do so by the village board of trustees. For the purpose of instituting such action, the village treasurer is authorized to employ an attorney, whose compensation shall be limited to the costs recoverable in each action instituted by him.

Derivation. Added by L. 1913, Ch. 234. In effect Apr. 9, 1913.

Amended by L. 1914, Ch. 810, in effect Apr. 11, 1914.

§ 138-a. Designation of town receiver of taxes as village receiver in certain villages.

In each village in this state within a county having a population of more than three hundred thousand, and less than four hundred thousand, according to the last state enumeration prior to the passage of this act, when in and for any such county a special tax act has been heretofore or hereafter enacted, providing for, among other things a town receiver of taxes with duties to collect all state, county, town, school and town district taxes and assessments levied or assessed upon any taxable property within such town for the state, county, town, school or town tax district or part thereof therein, the board of trustees, if authorized so to do by special election called for the purpose, shall after such authorization designate and appoint the town receiver

of taxes as a village receiver of taxes at a compensation per annum not to exceed one per centum of the total of the village tax roll of each year respectively, and such designation and appointment shall be made annually at the first meeting of the village board after the commencement of the term of members of the board elected at the immediately preceding village election, and the term of office as village receiver of taxes of such town receiver when so designated and appointed shall continue for one year or if his term of office as town receiver expires within the year, then shall continue until the expiration within such year of his term of office as town receiver, and in the event that his term of office as town receiver expires within such year the vacancy in the office of village receiver of taxes thus created shall be filled by a like designation and appointment by the village board of the successor in office of such town receiver of taxes which said new designation and appointment of said successor in office of such town receiver of taxes shall continue for the remainder of said year and until the next annual like designation and appointment of the town receiver of taxes as village receiver of taxes by the village board. The said town receiver of taxes when so designated and appointed as village receiver of taxes shall in respect to the collection of village taxes and as to all his duties with respect to village taxes be deemed to act exclusively as the village tax receiver, and as such village receiver of taxes he shall before entering upon the duties of such office execute to the village and file with the village clerk an official undertaking in such sum and with such sureties as the village board of trustees shall direct and approve, and the village board of trustees may at any time require such officer to file a new official undertaking for such sum and with such sureties as the village board shall approve, and in any village where a proposition has been adopted giving the authority as aforesaid to the board of trustees to designate and appoint the town receiver of taxes as village receiver of taxes, thereafter there shall be no village collector of taxes elected until such time as after a period of two years following the adoption of such proposition, a proposition shall be adopted at a special election revoking the authority to designate and appoint the town receiver of taxes as village receiver of taxes as afore-

said. From and after the passage of this act it shall be the duty of any such town receiver of taxes in addition to the other duties imposed upon him by law, to file an undertaking as herein required and to collect village taxes and perform all the other duties herein required of a village receiver of taxes and all of the provisions of the general village law relating to a collector of taxes, and as to villages incorporated under special laws, of any special laws applicable to any such village not incorporated under the general village law, and all provisions at the time of the passage of this act in force relating to the collection of taxes, not inconsistent with this act, shall be deemed to continue in force and to apply to said receiver of taxes in the collection of village taxes, and shall be deemed to apply to the collection of village taxes, provided, however, that the penalties to be collected under said law or laws shall belong to the village, and provided further that all such village taxes, assessments, and penalties thereon shall be daily deposited in the village bank account and a duplicate deposit slip or receipt therefor together with an itemized statement of the taxes, assessment and penalties paid shall be transmitted to the treasurer of the village, and an itemized report thereof when required by the village board shall be submitted to said board.

Added by L. 1916, Ch. 556, in effect May 15, 1916.

§ 138-b. Taxes to be certified to town receiver.

All village taxes and assessments which have been or shall have been imposed in any such village shall be certified to said receiver of taxes by the treasurer of the village and shall be collected by the receiver of taxes, and any cancellations thereof by the proper authorities in accordance with law shall immediately upon any such cancellation be certified to said receiver of taxes, and all such village taxes remaining unpaid and uncanceled shall be collected by the said receiver of taxes and deposited and a report made thereon to the village treasurer and whenever required to the village board, as set forth in the last preceding section for the collection of current taxes. In case that all taxes and assessments which shall have accrued and been imposed in such village, the said receiver of taxes is hereby author-

ized, directed and empowered to collect such taxes as hereinbefore provided, with interest and penalties, pursuant to the provisions of the law under which such taxes and assessments accrued or were imposed, and in the manner provided by law applicable to village collectors or receivers and to village treasurers to collect such taxes or assessments at the time of their imposition.

Added by L. 1916, Ch. 556, in effect May 15, 1916.

§ 138-c. Sale of village tax liens; application of special act.

Whenever a proposition as provided in section one hundred and thirty-eight-a to authorize the designation and appointment of the town receiver of taxes as a village receiver of taxes shall be submitted at a special election there shall also be submitted at the same special election a separate proposition to authorize sales of village tax liens for village taxes and assessments in accordance with said special tax law applicable to said county and upon the adoption of such proposition all the provisions of said special tax law for said county for the sales of tax liens for taxes and assessments, and the foreclosure thereof, including each and every provision of said special act relating to sales and foreclosures of tax liens and all the pleadings and proceedings of such foreclosure actions shall apply to the village tax liens and to village tax sales and foreclosure of transfer of tax liens in every respect and to the same extent as to village taxes as by said special act is made applicable to town taxes, and for this purpose the village board shall be authorized to contract with the supervisor of the town, or said receiver of taxes, as the case may be, to sell and transfer for the village, village tax liens at the same time and in the same manner, and with the same force and effect and under all the provisions thereof as provided in said act, and whenever the said supervisor or receiver of taxes conducts a sale of village tax liens, he shall be deemed to act as an officer of the village exclusively for the village, and shall immediately account and pay over to the village, and for this purpose he shall prior to the conduct of said sales give a bond to the village to be approved by the village board as to amount and sufficiency of sureties and his compensation shall not exceed an

amount to be fixed by the village board and approved by the town board and shall not exceed one per centum of the total moneys received by him for and on behalf of the village, and at any such sale the village may be a purchaser and the said compensation so fixed to the supervisor or to said receiver shall be added to the amount of the tax as an additional penalty for the nonpayment thereof and the disbursements of the said supervisor or receiver authorized by said special tax act as to town taxes are hereby authorized as to village taxes, and upon vouchers therefor countersigned by such supervisor or receiver, the same shall be paid by the village the same as other village charges.

Added by L. 1916, Ch. 556, in effect May 15, 1916.

ARTICLE VI.

STREETS, SIDEWALKS AND PUBLIC GROUNDS.

Section 140. Definitions.

- 141. Separate highway district.
- 142. Care of bridges.
- 143. When village may construct or repair bridges.
- 144. Dedication of streets.
- 145. Petition for street improvement or acceptance.
- 146. Notice of meeting of board to consider petition.
- 147. Meeting and determination of board.
- 148. Effect of determination.
- 149. Application for commissioners; notice of application.
- 150. Appointment of commissioners.
- 151. Notice of meeting of commissioners.
- 152. Meeting and award of commissioners.
- 153. Appeal from award of commissioners.
- 154. Return by clerk.
- 155. Hearing of the appeal.
- 156. Compensation of commissioners.
- 157. Costs on appeal.
- 158. Payment for property acquired for street improvements.
- 159. Changing grade of street or bridge.
- 160. Streets on boundary lines.
- 161. Crosswalks and sidewalks.
- 162. Credit for flagging sidewalk.
- 163. Snow and ice on sidewalks.
- 164. Cleaning streets.
- 165. Sprinkling streets.
- 166. Pavements.
- 167. Trimming trees.
- 167a. Appropriations for shade trees.
- 168. Local assessments under this article.
- 169. Acquisition of lands for parks, squares, athletic fields and play grounds.
- 169a. Acquisition of real property by gift, for municipal purposes.
- 170. Lighting and care of streets and roads in certain subdivisions.
- 171. Dedication of land for parkway.
- 172. Village may acquire street for parkway.
- 173. Village board may improve dedicated streets.
- 174. Franchise rights in streets not to be included.

§ 140. Definitions.

The term "street" as used in this chapter also includes a highway, road, avenue, lane or alley which the public have the right to use; and the term "pavement" includes a macadam, telford, asphalt, brick or other similarly improved roadbed, and is only applied to the portion of the street between the sidewalks or established curb lines.

See Leavitt's Code of Negligence; Nellis on Street Railways, 2d Edition; Curtis on Electricity.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 140.

This section was new in former Village Law.

DEFINITION

The term street in its ordinary acceptation means a public way, road or thoroughfare in a city or village. In *re Godfrey*, 95 N. Y. 135 (1884); *Brace v. New York, etc., R. Co.*, 27 N. Y. 269 (1863); see *Village of Fulton v. Tucker*, 3 Hun, 529 (1875).

The word "streets" includes the entire space between the outer lines thereof, that is not only the roadway but also the sidewalks. *Pomfrey v. Village of Saratoga*, 104 N. Y. 459 (1887); *Wallace v. Mayor, etc., of New York*, 2 Hilt, 440 (1859).

TITLE AND OWNERSHIP

Title and ownership of streets may frequently be vested in the municipality by statute or charter provisions. *DeWitt v. Elmira, etc., Co.*, 134 N. Y. 495 (1892); see *Adamson v. Nassau, etc., R. Co.*, 89 Hun, 261 (1895), 34 N. Y. Supp. 1073.

While it is sometimes said to hold the title to the bed of the streets, its title is that of trustee for the public. *Knickerbocker, etc., Co. v. Forty-second, etc., Co.*, 176 N. Y. 408 (1903); *Adamson v. Nassau, etc., R. Co.*, 89 Hun, 261 (1895); *People v. Kerr*, 27 N. Y. 188, aff'g 37 Barb. 357; *Milhau v. Sharp*, 27 N. Y. 612, aff'g 28 Barb. 228.

It cannot alienate or appropriate its streets and has no property rights therein. *Adamson v. Nassau, etc., R. Co.*, 89 Hun, 261 (1895), 34 N. Y. Supp. 1073.

Fee of land in village street is presumed to belong to the abutting owners. *Ward v. Kropf*, 120 N. Y. Supp. 476 (1910).

CONTROL OF STREETS

Control of streets is vested in the legislature, which may direct their use. *Adamson v. Nassau, etc., R. Co.*, 89 Hun, 261 (1895), 34 N. Y. Supp. 1073.

The municipality itself has no inherent power over its streets, *Barhite v. Home, etc., Co.*, 50 App. Div. 25, 63 N. Y. Supp. 659; but such power of control is usually delegated by the state to some board or commission within the municipality, *Ghee v. Northern, etc., Co.*, 158 N. Y. 510; *Wormser v. Brown*, 149 N. Y. 163, aff'g 72 Hun, 93, 25 N. Y. Supp. 553; *Village of Haverstraw v. Eckerson*, 192 N. Y. 54 (1908), aff'g 124 App. Div. 18; 108 N. Y. Supp. 506.

Board of trustees has exclusive control of the streets of the village. *Hungerford v. Village of Waverly*, 125 App. Div. 311 (1908), 109 N. Y. Supp. 438.

Trustees not personally liable for injuries caused by defects in the street, for their negligence is that of the corporation. *Hungerford v. Village of Waverly*, 125 App. Div. 311 (1908), 109 N. Y. Supp. 438.

CARE OF STREETS

In general. It is the duty of a municipality to keep its streets in a reasonably safe condition for all ordinary usage. *Clemence v. City of Auburn*, 66 N. Y. 334 (1876); *Hubbell v. City of Yonkers*, 104 N. Y. 434 (1887); *Twist v. City of Rochester*, 165 N. Y. 619 (1900); *Bullock v. Mayor, etc.*,

of New York, 99 N. Y. 654 (1885); *Hunt v. Mayor, etc., of New York*, 109 N. Y. 134 (1888); *Vascarimi v. City of New York*, 54 Misc. 600 (1907); *Beltz v. City of Yonkers*, 148 N. Y. 67 (1895); *Kirk v. Village of Homer*, 77 Hun, 459 (1894), 28 N. Y. Supp. 1009; *Wilson v. City of Troy*, 135 N. Y. 96 (1892); *Getzoff v. City of New York*, 51 App. Div. 450 (1900); *Tubesing v. City of Buffalo*, 51 App. Div. 14 (1900); *Dougherty v. Village of Horseheads*, 159 N. Y. 154 (1899); *Ring v. City of Cohoes*, 77 N. Y. 83 (1879); *Archer v. City of Mt. Vernon*, 57 App. Div. 32 (1901); *Sweet v. City of Poughkeepsie*, 97 App. Div. 82 (1904); *Bradner v. Village of Warwick*, 91 App. Div. 408 (1904); *Akers v. Mayor, etc., of New York*, 14 Misc. 524 (1895); *Roach v. City of Ogdensburg*, 91 Hun, 8 (1895); *Pomfrey v. Village of Saratoga*, 104 N. Y. 459 (1887); *Williams v. City of Brooklyn*, 33 App. Div. 539 (1898); *McKone v. Village of Warsaw*, 187 N. Y. 336 (1907); *Ehrgott v. Mayor, etc., of New York*, 96 N. Y. 264 (1884); *Russell v. Village of Canastota*, 98 N. Y. 496 (1885); *Nelson v. Village of Canastota*, 100 N. Y. 89 (1885); *Ivory v. Town of Deerpark*, 116 N. Y. 476 (1889); *Kunz v. City of Troy*, 104 N. Y. 344 (1887); *Requa v. City of Rochester*, 45 N. Y. 129 (1871); *Diveny v. City of Elmira*, 51 N. Y. 506 (1873); *Weed v. Village of Ballston Spa*, 76 N. Y. 329 (1879); *Hutson v. City of New York*, 9 N. Y. 165 (1853); *Lavadure v. Mayor, etc., of New York*, 28 App. Div. 65 (1898); *Frank v. Village of Warsaw*, 116 App. Div. 618, aff'd May 17, 1910; see *New York Law Journal*, June 3, 1910.

This liability extends to ordinary usage only. *Ring v. City of Cohoes*, 77 N. Y. 83 (1879); see *Sweet v. City of Poughkeepsie*, 75 App. Div. 274 (1902).

Degree of care. Only ordinary and reasonable care is required. *Pettingill v. City of Yonkers*, 116 N. Y. 558 (1889); *Vaccarini v. City of New York*, 54 Misc. 600 (1907); *Hubbell v. City of Yonkers*, 104 N. Y. 434 (1887); *Beltz v. City of Yonkers*, 148 N. Y. 67 (1895); *Lane v. Town of Hancock*, 142 N. Y. 510 (1894); *Ring v. City of Cohoes*, 77 N. Y. 83 (1879); *Peard v. City of Mt. Vernon*, 83 Hun, 250 (1894); *Hamilton v. City of Buffalo*, 173 N. Y. 73 (1903), rev'g 55 App. Div. 423; *McKone v. Village of Warsaw*, 187 N. Y. 336 (1907); *McNish v. Village of Peekskill*, 91 Hun, 324 (1895); *Hume v. Mayor, etc., of New York*, 47 N. Y. 639 (1872); *Ivory v. Town of Deerpark*, 116 N. Y. 476 (1889).

The municipality is not an insurer, but its liability is bottomed on negligence which must be shown to warrant a recovery. *King v. Village of Fort Ann*, 180 N. Y. 496 (1905), rev'g 90 App. Div. 617; *Hunt v. Mayor, etc., of New York*, 109 N. Y. 134 (1888); *Nelson v. Village of Canastota*, 100 N. Y. 89 (1885); *Danaher v. City of Brooklyn*, 51 Hun, 563 (1889); *Vaccarini v. City of New York*, 54 Misc. 600 (1907); *Schreiber v. Mayor, etc., of New York*, 11 Misc. 551 (1895); *Hubbell v. City of Yonkers*, 104 N. Y. 434 (1887); *Beltz v. City of Yonkers*, 148 N. Y. 67 (1895); *Getzoff v. City of New York*, 51 App. Div. 450 (1900); *Ivory v. Town of Deerpark*, 116 N. Y. 476 (1889); *Tubesing v. City of Buffalo*, 51 App. Div. 14 (1900); *Peard v. City of Mt. Vernon*, 83 Hun, 250 (1894); *Archer v. City of Mt. Vernon*, 57 App. Div. 32 (1901); *Hamilton v. City of Buffalo*, 173 N. Y. 73 (1903); *Gorham v. Village of Cooperstown*, 59 N. Y. 660 (1875); *Williams v. City of Brooklyn*, 33 App. Div. 539 (1898); *McKone v. Village of Warsaw*, 187 N. Y. 336 (1907); *Smith v. City of Brooklyn*, 36 Hun, 224 (1885).

Slight defects which could not be anticipated or foreseen in the exercise of reasonable care will not render the municipality liable. *Tubesing v. City of Buffalo*, 51 App. Div. 14 (1900); *Beltz v. City of Yonkers*, 148 N. Y. 67

(1895); *Vaccarini v. City of New York*, 54 Misc. 600 (1907); *Hubbell v. City of Yonkers*, 104 N. Y. 434 (1887); *King v. Village of Fort Ann*, 180 N. Y. 496 (1905), rev'g 90 App. Div. 617; *O'Reilly v. City of Syracuse*, 49 App. Div. 538 (1900); *Getsoff v. City of New York*, 51 App. Div. 450 (1900); *Hamilton v. City of Buffalo*, 173 N. Y. 72 (1903), rev'g 55 App. Div. 423; *Gorham v. Village of Cooperstown*, 59 N. Y. 660 (1875); *Davidson v. City of New York*, 117 N. Y. Supp. 185 (1909); *McCarthy v. City of Lockport*, 13 App. Div. 494 (1897), 43 N. Y. Supp. 693; *Stone v. City of Troy*, 21 N. Y. St. Rep. 639 (1889), 4 N. Y. Supp. 528; *Corson v. City of New York*, 78 App. Div. 481 (1903), 79 N. Y. Supp. 604; *Butler v. Village of Oxford*, 186 N. Y. 444 (1906), rev'g 101 App. Div. 611; *McKone v. Village of Warsaw*, 187 N. Y. 336 (1907); *O'Shaughnessy v. Village of Middleport*, 93 App. Div. 93 (1904), 86 N. Y. Supp. 944; *Rodrigues v. Village of Ossining*, 111 App. Div. 297 (1906).

This question, however, is frequently submitted to the jury. *Goodfellow v. Mayor, etc., of New York*, 100 N. Y. 15 (1886); *Clemence v. City of Auburn*, 66 N. Y. 334 (1876); *Brush v. City of New York*, 59 App. Div. 12 (1901).

Proximate cause. The defect complained of must be the proximate cause of the injury. *Halstead v. Village of Warsaw*, 43 App. Div. 39 (1899); *Vaccarini v. City of New York*, 54 Misc. 600 (1907); *Lane v. Town of Hancock*, 142 N. Y. 510 (1894); *Ring v. City of Cohoes*, 77 N. Y. 83 (1879); *Storey v. Mayor, etc., of New York*, 29 App. Div. 316 (1898); *Rodrigues v. Village of Ossining*, 111 App. Div. 297 (1906); *McCarthy v. City of Lockport*, 13 App. Div. 494 (1897); *Robinson v. Mayor, etc., of New York*, 7 Misc. 645 (1894); *Ehrgott v. Mayor, etc., of New York*, 96 N. Y. 264 (1884); see *Frank v. Village of Warsaw*, 116 App. Div. 618 (aff'd 1910); see *New York Law Journal*, June 3, 1910.

No liability attaches as a matter of course from falls upon a slippery pavement. *Vaccarini v. City of New York*, 54 Misc. 600 (1907); *Kaveny v. City of Troy*, 108 N. Y. 571 (1888); *O'Reilly v. City of Syracuse*, 49 App. Div. 538 (1900); *Harrington v. City of Buffalo*, 121 N. Y. 147 (1890); *Kinney v. City of Troy*, 108 N. Y. 567 (1888); *Rodrigues v. Village of Ossining*, 111 App. Div. 297 (1906); *Muller v. City of Newburgh*, 32 Hun, 24 (1884); *Smith v. City of Brooklyn*, 36 Hun, 224 (1885).

Liability for injuries in streets. The municipality is liable for injuries resulting from failure to keep its streets in good condition and repair. *Todd v. City of Troy*, 61 N. Y. 506 (1875); *Wallace v. Mayor, etc., of New York*, 2 Hilt. 440 (1859); *Clark v. City of Lockport*, 49 Barb. 580 (1867); *Conrad v. Village of Ithaca*, 16 N. Y. 158 (1857); *Saulsbury v. Village of Ithaca*, 94 N. Y. 27 (1883); *Nelson v. Village of Canisteo*, 100 N. Y. 89 (1885); *Masters v. City of Troy*, 50 Hun, 485 (1888); *Kirk v. Village of Homer*, 77 Hun, 459 (1894); *Bullock v. Mayor, etc., of New York*, 99 N. Y. 654 (1885); *Rehberg v. Mayor, etc., of New York*, 91 N. Y. 137 (1883); *Archer v. City of Mount Vernon*, 51 App. Div. 32 (1901); *Sweet v. City of Poughkeepsie*, 97 App. Div. 82 (1904); *Brush v. City of New York*, 59 App. Div. 12 (1901); *Aslen v. Village of Charlotte*, 35 App. Div. 625 (1898); *Akers v. Mayor, etc., of New York*, 14 Misc. 524 (1895); *Roach v. City of Ogdensburg*, 91 Hun, 8 (1895); *Pomfrey v. Village of Saratoga Springs*, 104 N. Y. 459 (1887); *Williams v. City of Brooklyn*, 33 App. Div. 539 (1898); *Burns v. City of Yonkers*, 83 Hun, 211 (1894); *Ehrgott v. Mayor, etc., of New York*, 96

N. Y. 264 (1884); *Pettingill v. City of Yonkers*, 116 N. Y. 558 (1889); *Russell v. Village of Canastota*, 98 N. Y. 496 (1885); *Wilson v. City of Troy*, 135 N. Y. 96 (1892); *Diveny v. City of Elmira*, 51 N. Y. 506 (1873); *Kunz v. City of Troy*, 104 N. Y. 344 (1887); *Requa v. City of Rochester*, 45 N. Y. (1897); *Weed v. Village of Ballston Spa*, 76 N. Y. 329 (1879); *Hutson v. Cit of New York*, 9 N. Y. 165 (1853); *Lavadure v. Mayor, etc., of New York*, 28 App. Div. 65 (1898).

Failure to place good rails or barriers in front of excavations will render the municipality liable. *Russell v. Village of Canastota*, 98 N. Y. 496 (1885); *Wilson v. City of Troy*, 135 N. Y. 96 (1892); *Weed v. Village of Ballston Spa*, 76 N. Y. 329 (1879); *Ivory v. Town of Deerpark*, 116 N. Y. 476 (1889).

Liability dependent upon locality to some extent. *McKone v. Village of Warsaw*, 187 N. Y. 336 (1907); *Roach v. City of Ogdensburg*, 91 Hun, 9 (1895); *Burns v. City of Yonkers*, 83 Hun, 211 (1894).

More care is required upon a populous street of a city than upon the streets or highways of a village or town. *Glasier v. Town of Hebron*, 131 N. Y. 447 (1892); *McKone v. Village of Warsaw*, 187 N. Y. 336 (1907).

Similar accidents. That no accident of the same nature had occurred before will not relieve the municipality. *Bradner v. Village of Warwick*, 91 App. Div. 408 (1904); *Brush v. City of New York*, 59 App. Div. 12 (1901).

Evidence to show that similar accidents have occurred at the same place must be definite and accurate and establish that they were due to the same cause. *Carson v. City of New York*, 78 App. Div. 481 (1903), 79 N. Y. Supp. 604; *Pomfrey v. Village of Saratoga*, 104 N. Y. 459 (1887); *Williams v. City of Brooklyn*, 33 App. Div. 539 (1898); *Friedman v. City of New York*, 116 N. Y. Supp. 750 (1909); see *Fordham v. Gouverneur Village*, 160 N. Y. 541 (1899).

Question for jury. Question whether a street was kept in reasonably safe condition is for the jury. *Murphy v. Village of Seneca Falls*, 57 App. Div. 581 (1903); *Roach v. City of Ogdensburg*, 91 Hun, 9 (1895); *Bullock v. Mayor, etc., of New York*, 99 N. Y. 654 (1885); *Ladrick v. Village of Green Island*, 103 App. Div. 71 (1905), 92 N. Y. Supp. 622; *Beck v. City of Buffalo*, 50 App. Div. 621 (1900); *Todd v. City of Troy*, 61 N. Y. 506 (1875); *Brush v. City of New York*, 59 App. Div. 12 (1901); *Bradner v. Village of Warwick*, 91 App. Div. 408 (1904); *Fordham v. Gouverneur Village*, 160 N. Y. 541 (1899); *Burns v. City of Yonkers*, 83 Hun, 211 (1894); *Russell v. Village of Canastota*, 98 N. Y. 496 (1885); *Rehberg v. Mayor, etc., of New York*, 91 N. Y. 137 (1883); *Morris v. Village of Saratoga*, 55 App. Div. 263 (1900); *Wallace v. Village of Canandaigua*, 117 N. Y. Supp. 912 (1909); *Frank v. Village of Warsaw*, 116 App. Div. 618 (aff'd 1910); see *New York Law Journal*, June 3, 1910.

Notice. Municipalities are charged with notice of their own acts, and where an injury results from defective conditions due to the act of the municipality or its authorized agents, no notice is necessary. *Wilson v. City of Troy*, 135 N. Y. 96 (1892); *Scanlon v. City of Watertown*, 14 App. Div. 1 (1897); *Brusso v. City of Buffalo*, 90 N. Y. 679 (1882); *Akers v. Mayor, etc., of New York*, 14 Misc. 524 (1895); *Stedman v. City of Rome*, 88 Hun, 279 (1895); *Turner v. City of Newburg*, 109 N. Y. 301 (1888); *Riddle v. Village of Westfield*, 65 Hun, 432 (1892).

In other cases notice, either actual or implied, is necessary to charge the municipality. *Griffin v. City of New York*, 9 N. Y. 456 (1854); *Hume v.*

Mayor, etc., of New York, 47 N. Y. 639 (1872); *Rehberg v. City of New York*, 91 N. Y. 137 (1883); *King v. City of Troy*, 104 N. Y. 344 (1887), rev'g 36 Hun, 615; *Weed v. Village of Ballston Spa*, 76 N. Y. 329 (1879); *Requa v. City of Rochester*, 45 N. Y. 129 (1871); *Sweet v. City of Poughkeepsie*, 75 App. Div. 274 (1902); *McManus v. City of Watertown*, 88 App. Div. 361 (1903); *Benjamin v. Village of Tupper Lake*, 110 App. Div. 426 (1905); *Muller v. City of Newburgh*, 32 Hun, 24 (1884); *Gorham v. Village of Cooperstown*, 59 N. Y. 660 (1875); *Berger v. Mayor, etc., of New York*, 65 App. Div. 394 (1901); *Crawford v. City of New York*, 68 App. Div. 107 (1902); *McKee v. City of New York*, 120 N. Y. Supp. 149 (1909).

Notice to an officer or agent of the municipality is sufficient to charge the latter. *Rehberg v. Mayor, etc., of New York*, 91 N. Y. 137 (1883), (policeman); *McManus v. City of Watertown*, 88 App. Div. 361 (1903), (superintendent of public works).

Not liable where there is no notice of danger. *McNish v. Village of Peekskill*, 91 Hun, 324 (1895); *Rogers v. City of Rome*, 96 App. Div. 427 (1904); *Muller v. City of Newburg*, 32 Hun, 24 (1884); *Neddo v. Village of Ticonderoga*, 77 Hun, 524 (1894); *McKee v. City of New York*, 120 N. Y. Supp. 149 (1909).

Express notice need not be shown, but if it appears that the municipality should have known of the defect in the exercise of reasonable diligence, it is liable. *Laverdure v. Mayor, etc., of New York*, 28 App. Div. 65 (1898); *King v. City of Troy*, 104 N. Y. 344 (1887); *Hume v. Mayor, etc., of New York*, 47 N. Y. 639 (1872); *Weed v. Village of Ballston Spa*, 76 N. Y. 329 (1879); *McKee v. City of New York*, 120 N. Y. Supp. 149 (1909); *Rehberg v. City of New York*, 91 N. Y. 137 (1883); *Requa v. City of Rochester*, 45 N. Y. 129 (1871); *Pomfrey v. Village of Saratoga*, 104 N. Y. 458 (1887); *Williams v. City of Brooklyn*, 33 App. Div. 539 (1898); *Moriarty v. City of New York*, 116 N. Y. Supp. 323 (1909).

Reasonable time within which defect should be discovered and remedied is a question for the jury. *Rehberg v. Mayor, etc., of New York*, 91 N. Y. 137 (1883); *McKee v. City of New York*, 120 N. Y. 149 (1909).

Snow and ice. Snow and ice allowed to accumulate upon the streets of a municipality will render the same liable for injury resulting therefrom. *McManus v. City of Watertown*, 88 App. Div. 361 (1903); *Todd v. City of Troy*, 61 N. Y. 506 (1875); *Powers v. Village of Moravia*, 123 App. Div. 191 (1908); *Kopper v. City of Yonkers*, 110 App. Div. 747 (1906).

Something more than the presence of ice due to low winter temperature must be shown, however, to make the municipality chargeable with negligence. *Foley v. City of New York*, 95 App. Div. 374 (1904); *Smith v. City of Brooklyn*, 36 Hun, 224 (1885); *Peard v. City of Mount Vernon*, 83 Hun, 250 (1894); *Kaveny v. City of Troy*, 108 N. Y. 571 (1888); *Taylor v. City of Yonkers*, 105 N. Y. 202 (1887); *Kinney v. City of Troy*, 108 N. Y. 567 (1888); *Harrington v. City of Buffalo*, 121 N. Y. 147 (1890); *Kleng v. City of Buffalo*, 72 Hun, 541 (1893); *Muller v. City of Newburg*, 32 Hun, 24 (1884); *Rogers v. City of Rome*, 96 App. Div. 427 (1904); *Hawkins v. Mayor, etc., of New York*, 54 App. Div. 258 (1900); *Moran v. City of New York*, 98 App. Div. 301 (1904); *Berger v. Mayor, etc., of New York*, 65 App. Div. 394 (1901); *Crawford v. City of New York*, 68 App. Div. 107 (1902); *O'Keefe v. Mayor, etc., of New York*, 29 App. Div. 524 (1898).

Notice. In this case, as with other defects, the municipality must have notice of same, or reasonable time before notice will be presumed. *Taylor*

v. City of Yonkers, 105 N. Y. 202 (1887); *Berger v. Mayor, etc., of New York*, 65 N. Y. 394 (1901); *Muller v. City of Newburgh*, 32 Hun, 24 (1884); *Smith v. City of Brooklyn*, 36 Hun, 224 (1885); *Foley v. City of New York*, 95 App. Div. 374 (1904); *Moran v. City of New York*, 98 App. Div. 301 (1904); *Kaveny v. City of Troy*, 108 N. Y. 571 (1888); *Harrington v. City of Buffalo*, 121 N. Y. 147 (1890); *Kleng v. City of Buffalo*, 72 Hun, 541 (1893); *Crawford v. City of New York*, 68 App. Div. 107 (1902); *Hawkins v. Mayor, etc., of New York*, 54 App. Div. 258 (1900); *O'Keeffe v. Mayor, etc., of New York*, 29 App. Div. 524 (1898).

Where snow and ice accumulated for an unreasonable length of time the municipality is guilty of negligence without proof of actual notice. *Todd v. City of Troy*, 61 N. Y. 506 (1875).

One may be guilty of contributory negligence in walking upon ice where he could have passed to the side in safety. *Kleng v. City of Buffalo*, 72 Hun, 541 (1893); *Rogers v. City of Rome*, 96 App. Div. 427 (1904); *Durkin v. City of Troy*, 61 Barb. 437 (1872); *Weston v. City of Troy*, 139 N. Y. 281 (1893); *O'Keeffe v. Mayor, etc., of New York*, 29 App. Div. 524 (1898).

Contributory negligence. A person using a public street has a right to assume that it is safe and is not required to be vigilant to discover danger. *Brusco v. City of Buffalo*, 90 N. Y. 679 (1882); *Laverdure v. Mayor, etc., of New York*, 28 App. Div. 65 (1898); *Pettingill v. City of Yonkers*, 116 N. Y. 558 (1889); *Weed v. Village of Ballston Spa*, 76 N. Y. 329 (1879); *Ivory v. Town of Deerpark*, 116 N. Y. 476 (1889).

The presumption which a wayfarer may indulge that the streets of a city are safe, and which excuses him from maintaining a vigilant outlook for danger has no application where the danger is known and obvious. *Neddo v. Village of Ticonderoga*, 77 Hun, 524 (1894); *Weston v. City of Troy*, 139 N. Y. 281 (1893); see *Crecelius v. City of New York*, 114 App. Div. 801 (1906).

Where a pedestrian approaches a point of danger it is his duty to do so with a care and caution commensurate with the dangers of the locality. *Neddo v. Village of Ticonderoga*, 77 Hun, 524 (1894); *McNish v. Village of Peekskill*, 91 Hun, 324 (1895); *Crecelius v. City of New York*, 114 App. Div. 801 (1906).

Persons standing on roadway of a street must exercise care commensurate with the danger, to avoid vehicles. *Boker v. Kochler, etc., Co.*, 116 N. Y. Supp. 540 (1909).

Question for jury. Question of contributory negligence is for the jury. *Cronjeager v. City, etc., Co.*, 119 N. Y. Supp. 181 (1909); *Parcells v. City of Auburn*, 77 Hun, 139 (1894); *Bradner v. Village of Warwick*, 91 App. Div. 408 (1904); *Bullock v. Mayor, etc., of New York*, 99 N. Y. 654 (1885); *Ladrick v. Village of Green Island*, 103 App. Div. 71 (1905), 92 N. Y. Supp. 622; *Beck v. City of Buffalo*, 50 App. Div. 621 (1900); *Todd v. City of Troy*, 61 N. Y. 506 (1875); *Brush v. City of New York*, 59 App. Div. 12 (1901); *Fordham v. Gouverneur Village*, 160 N. Y. 541 (1889); *Pomfrey v. Village of Saratoga*, 104 N. Y. 459 (1887); *Stedman v. City of Rome*, 88 Hun, 279 (1886); *Morris v. Village of Saratoga Springs*, 55 App. Div. 263 (1900).

It is only in very exceptional cases that contributory negligence can be determined as a legal conclusion from the facts proved. *Stedman v. City of Rome*, 88 Hun, 279 (1886).

Where the evidence shows that the acts of the plaintiff have contributed

to or caused the injury complained of there can be no recovery. *Durkin v. City of Troy*, 61 Barb. 437 (1872); *McNish v. Village of Peekskill*, 91 Hun, 324 (1896); *Rogers v. City of Rome*, 96 App. Div. 427 (1904); *Neddo v. Village of Ticonderoga*, 77 Hun, 524 (1894); *Weston v. City of Troy*, 139 N. Y. 281 (1893); *Klang v. City of Buffalo*, 72 Hun, 541 (1893); *Crecelius v. City of New York*, 114 App. Div. 801 (1906).

Remedy of village against third persons. A municipality which has been held liable in an action for damages on account of an obstruction or defect in its streets, has a remedy over against a third person who has unlawfully created such defect or obstruction. *City of Rochester v. Montgomery*, 72 N. Y. 65 (1878); *Village of Port Jervis v. First Nat. Bank*, 96 N. Y. 550 (1884); *Village of Seneca Falls v. Zalinski*, 8 Hun, 571 (1876); *City of Rochester v. Campbell*, 55 Hun, 138 (1889); see *Village of Fulton v. Tucker*, 3 Hun, 529 (1875).

Consent or license to excavate a public street does not relieve from liability where the act is performed in a negligent or improper manner. *Mairs v. Manhattan, etc., Ass'n.*, 89 N. Y. 498 (1882); *Village of Port Jervis v. First Nat. Bank*, 96 N. Y. 550 (1884); see *Village of Seneca Falls v. Zalinski*, 8 Hun, 571 (1876).

In such case the licensee impliedly agrees to perform the act in such a manner as to protect the public from danger and the municipality from liability. *Village of Port Jervis v. First Nat. Bank*, 96 N. Y. 550 (1884).

§ 141. Separate highway district.

The streets and public grounds of a village, except as provided in the next section, are under the exclusive control and supervision of the board of trustees. The board of trustees may expend a portion of the street fund upon outside highways connecting with the village streets.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 141; originally revised from L. 1870, Ch. 291, tit. 7, sec. 1, in part, as amended by L. 1871, Ch. 870.

Last sentence is new.

Revisers' note (1897). The first sentence re-enacts the first part of section 1 of title VII of the act of 1870 without change. The provision authorizing the trustees to expend a portion of the street fund on the highways outside of the village is new, but is contained in many special charters.

This section confers same power upon the village trustees as is conferred upon the highway commissioner of a town with respect to highways therein. *Village of Oxford v. Willoughby*, 181 N. Y. 155 (1905), aff'g 87 App. Div. 609.

§ 142. Care of bridges.

If at the time this chapter takes effect, the board of trustees of a village has the supervision and control of a bridge therein, it shall continue to exercise such control under this chapter. In any other case, every public bridge within a village shall be under the control of the commissioners of highway of the town in which

the bridge is wholly or partly situated, or such other officer as may be designated by special law, and the expense of constructing and repairing such bridge and the approaches thereto is a town charge, unless the village assumes the whole or part of such expense.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 142; originally revised from L. 1870, Ch. 291, tit. 8, sec. 27.

Editor's note. The provision in relation to care of bridges by officers designated by special law was inserted by the Legislature.

Village not bound to repair unless it elects to do so, and in the absence of such election the town continues liable. *Washburn v. Village of Mount Kisco*, 35 Hun, 329 (1885); *Taylor v. Village of Mattewan*, 122 App. Div. 406 (1907), 106 N. Y. Supp. 841.

What constitutes a bridge within the meaning of this section. See *Schell v. Town of German Flats*, 54 Misc. 445 (1907), 104 N. Y. Supp. 116; *aff'd* 123 App. Div. 197.

Care of Bridges. Care of a public highway bridge over railroad tracks on a village street within a town limit rests upon the town and an action is not maintainable against the village for personal injuries sustained because of a defect in the sidewalk of the bridge. *Murphy v. Village of Fort Edward* (1913), 79 Misc. 296.

A bridge erected by a railroad company within a village for the purpose of continuing the highway across its tracks must be maintained by the village in a reasonably safe condition, such bridge not being a "public" bridge within the meaning of this section. Hence, a plaintiff suing for personal injuries alleged to have been caused by negligence in the maintenance of such bridge should not be nonsuited upon the ground that the town rather than the village should have been made defendant. *Murphy v. Village of Fort Edward*, 158 App. Div. 342.

§ 143. When village may construct or repair bridges.

A village may assume the control, care and maintenance of a bridge or bridges wholly within its boundaries, upon the adoption of a proposition therefor, at a village election; or a proposition may be adopted authorizing the board of trustees to enter into an agreement with the commissioners of highways of a town, in which any part of such village is situated, to construct or repair a bridge in any part of the village included in such town, at the joint expense of the village and town, which agreement shall fix the portion to be paid by each.

Derivation. Former Village Law, (L. 1897, Ch. 414), sec. 143; originally revised from L. 1870, Ch. 291, tit. 8, sec. 27.

Revisers' note (1897). Section 27 of the act of 1870 was amended by Laws 1890, chapter 542, section 2 of which provided that the act should only apply to Westchester county. The editor of the ninth edition, therefore, omitted section 27 as having been made local by the act of 1890. It would seem to be the intention of the Legislature, however, that the amendment should only apply to Westchester county, and that as to other villages section 27 should stand as theretofore.

Rule of liability not changed by the enactment of the General Village Law, which substantially re-enacted the provisions of the former statute. *Taylor v. Village of Mattewan*, 122 App. Div. 406 (1907), 106 N. Y. Supp. 841.

§ 144. Dedication of streets.

An owner of land in a village who has laid out a street thereon may dedicate such street, or any part thereof, or an easement therein, to the village for a public street, or an owner may dedicate for such purpose land not laid out as a street. Upon an offer in writing by the owner to make such a dedication, the board of trustees shall meet to consider the matter; and it may, by resolution, determine to accept a dedication of the whole or any part of the land described in such offer, or of the whole or any part of such street, to be described in such resolution. Upon the adoption of such a resolution the owner may execute and deliver to the village clerk a proper conveyance of the land to be dedicated. The board of trustees may, by resolution, accept the conveyance, and a certified copy of such resolution, together with the conveyance, shall thereupon be recorded in the office of the county clerk. Upon the acceptance of the conveyance the land described therein shall become and be a public street of the village. No street less than two rods in width shall be accepted by dedication, unless a proposition therefor be submitted to and adopted at a village election after consideration and approval by the board of trustees, as provided in sections one hundred and forty-five, one hundred and forty-six and one hundred and forty-seven of this article. All offers of dedication must be entered at length in the minutes of the board of trustees.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 144. This section was new in former Village Law.

Amended by L. 1916, Ch. 10, in effect Feb. 21, 1916.

Cross references. Offer to dedicate street or land for street, see post, Form 45.

§ 145. Petition for street improvement or acceptance.

Five resident free-holders may present to the board of trustees a petition for laying out, altering, widening, narrowing, discontinuing or accepting the dedication of a street in the village. The petitioners must deposit with such petition the sum of fifty dollars to cover all expenses for publishing, posting and serving notices of meeting of board to consider the petition. If petition be granted said deposit shall be returned in full to the petitioners, but if denied, the surplus only shall be so returned, after paying expenses mentioned in this section. The petition must be addressed to the board of trustees and must contain a statement of the following facts:

1. The names and residences of the petitioners.
2. If the petition be for the laying out of a street, the general course thereof, and a description of the land to be taken.
3. If the petition be for the alteration of a street, its name, the proposed alteration, and a description of the land if any, to be taken.
4. If the petition be for the widening of a street, its name and description of the land to be taken.
5. If the petition be for the narrowing of a street, its name, its proposed width after such alteration, and the manner in which such narrowing is to be effected.

6. If the petition be for the discontinuance of a street, its name, and the part proposed to be discontinued.

7. If the petition be for the laying out, alteration or widening of a street, the names and residences of the owners of all land to be taken.

8. If the petition be for the narrowing or discontinuance of a street, the names and residences of the owners of adjoining lands affected.

9. If the petition be for the acceptance of a street of less than two rods in width, the width and length of such street, the name and residence of each owner of land adjoining the same and the improvements to be included in such dedication.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 145. Amended by L. 1911, Ch. 310, and L. 1916, Ch. 10, in effect Feb. 21, 1916.

This section was new in former Village Law.

This section and sections 145 to 158, in former Village Law (identically numbered in Consolidated Law), provided a new plan for street improvements and was a substitute for L. 1870, Ch. 291, tit. 7.

Cross references. Petition for laying out street, see post, Form 46.

Revisers' note (1897). This and the following sections, 145-158, are a substitute for title VII of the General Village Act of 1870, and furnish a new scheme for street improvements.

Petition should be signed by the majority of the taxpayers upon the street. *Folmsbee v. City of Amsterdam*, 142 N. Y. 118 (1894), 66 Hun, 214, 58 N. Y. St. Rep. 626; *Miller v. City of Amsterdam*, 78 Hun, 609, 28 N. Y. Supp. 1021 (1894), aff'd 149 N. Y. 288, 149 N. Y. 572.

Failure to insert name of owner will deprive the board of jurisdiction. *People v. Board of Trustees, etc.*, 32 Hun, 508 (1884), aff'd 102 N. Y. 81.

In proceedings to discontinue street the trustees can only act at a session of the board. *People v. Shaw*, 34 App. Div. 61 (1898).

Proceeding for the discontinuance of a street — use of old street until establishment of new one. An order made by a board of trustees of a village under section 145 et seq. of the Village Law, that a certain street be closed or discontinued, and that a new street be built before traffic is abandoned on the old street, should be construed to mean that the old street will remain a public highway until the new street is established, and should be confirmed, where the new street furnishes an ample way for a chemical company which now uses the old street as the only means of ingress and egress to and from its plant. *People ex rel. Brooklyn Cooperage Co. v. Gokey* (1917), 177 App. Div. 61, 163 N. Y. Supp. 693.

§ 145-a. Street improvement in villages of second class.

A street in a village of the second class shall not be laid out, altered or widened if the entire cost of such improvement including the acquisition of necessary land and the construction of such street exceed one thousand dollars, unless a proposition therefor be submitted to and adopted at a village election. A petition for such improvement in a village of the second class shall contain an estimate of the cost thereof, and if such estimate exceed one thousand dollars, shall be accompanied by proof that such improvement has been authorized by the adoption of a proposition at a village election.

Derivation. Added by L. 1911, Ch. 403, in effect June 23, 1911.

§ 146. Notice of meeting of board to consider petition.

Upon the presentation of the petition the board shall immediately give notice that it will meet at a specified time and place, not less than ten nor more than twenty days from the date of such notice, to consider the petition. The notice must state the general object of the petition, and if it be for the laying out of a street, a general description of its proposed course, and in any other case, the name of the street proposed to be changed, discontinued or accepted.

The notice must be served upon the following persons, unless such service be waived by them in writing:

1. If the petition be for the laying out of a street, upon each owner of land to be taken.

2. If the petition be for the alteration or widening of a street, upon each owner of land, if any, to be taken, and upon each owner of land adjoining the part of the street affected.

3. If the petition be for the narrowing of a street, upon each owner of land adjoining the part of the street affected.

4. If the petition be for the discontinuance of a street, upon each owner of land adjoining the part of the street proposed to be discontinued, and also upon the owner of land otherwise affected by the proposed discontinuance.

5. If the petition be for the acceptance of a street of less than two rods in width, upon each owner of land adjoining the same.

If a person other than the owner is in possession of such land, notice must also be served upon him. Such notice shall also be published in each newspaper in the village, and posted in five conspicuous places therein. The notice must be served, posted and published at least ten days before the hearing.

6. If the street petitioned to be laid out, altered, widened, narrowed, discontinued or accepted shall cross a railroad such notice shall be served upon the railroad company as required by section ninety of the railroad law.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 146. Subd. 6 added by L. 1912, Ch. 224.

Subd. 5, first par., added by L. 1916, Ch. 10, in effect Feb. 21, 1916.

Cross references. Service of notice, see post, sec. 330; notice of meeting of board to consider petition, see post, Form 47.

Provisions of statute must be strictly complied with, or all proceedings will be held void. In *Matter of South Market Street*, 76 Hun, 85 (1894); *People v. Board of Trustees, etc.*, 32 Hun, 508 (1884), *aff'd* 102 N. Y. 81; *Merritt v. Village of Port Chester*, 71 N. Y. 309 (1877).

Oath prescribed by statute must be taken, and any material variation thereof will render the proceedings illegal. *Merritt v. Village of Port Chester*, 71 N. Y. 309 (1877).

Preliminary notice should contain a correct description of the land to be taken. *People v. Trustees of Village of Haverstraw*, 132 N. Y. 88 (1893).

Failure to serve notice upon one of the owners will invalidate all subsequent proceedings. *People v. Board of Trustees, etc.*, 32 Hun, 508 (1884), *aff'd* 102 N. Y. 81.

§ 147. Meeting and determination of board.

The board shall meet at the time and place specified in the notice to consider the petition and also any objections thereto. A person affected by the proposed improvement, and upon whom notice has not been served, may appear upon the hearing. A voluntary general appearance of such a person is equivalent to personal service of the notice upon him. The board may adjourn the hearing, and must determine the matter within twenty days from the date fixed for such hearing. If the board determine to grant the petition an order must be entered in its minutes containing a description of the land, if any, to be taken.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 147.

Cross references. Order of board granting petition, see post, Form 48.

Requiring "written objections" is an unauthorized restriction upon the rights of parties, and such a requirement is in excess of jurisdiction. *Merritt v. Village of Port Chester*, 71 N. Y. 309 (1877).

Action under this section must be had at a session of the board. *People v. Shaw*, 34 App. Div. 61 (1898), 54 N. Y. Supp. 218.

In calculating time under this section the day from which the reckoning is made should be excluded. *People v. Van Brunt*, 99 App. Div. 564 (1904).

Board of trustees should make a survey and definite description of the proposed street and determine in the first instance its boundaries and extent. *People v. Trustees of Village of Haverstraw*, 132 N. Y. 88 (1893).

Affirmative decision should be made by resolution to be entered in the minutes of the board. *People v. Board of Trustees, etc.*, 32 Hun, 508 (1884), *aff'd* 102 N. Y. 81.

Action of board is judicial in its nature, and may be reviewed by certiorari. *People v. Shaw*, 34 App. Div. 61 (1898), 54 N. Y. Supp. 218; *People v. Van Brunt*, 99 App. Div. 264 (1904).

Cannot discontinue pending proceedings against a corporation without consent or leave of court. *Matter of Folts Street*, 29 App. Div. 69 (1898).

May discontinue proceedings for the extension of a street, but cannot subsequently restore the proceedings as against interested parties who have acquired new rights. *Matter of Folts Street*, 29 App. Div. 69 (1898).

§ 148. Effect of determination.

The determination by the board has the following effect:

1. If the petition for the laying out, alteration or widening of a street be granted, the board of trustees may acquire the land for such improvement by purchase or by proceedings under this article or by proceedings under the condemnation law. But no street shall be laid out through a building or any fixtures or erections for the purposes of trade or manufacture, or any yard or inclosure necessary to be used for the enjoyment thereof, without the consent of the owner, except upon the order of a justice of the supreme court residing in the judicial district in which the village or a part thereof is situated, to be granted upon an application by the board of trustees on a notice to the owner of not less than ten days.

2. If the petition for the narrowing of a street be granted, the board shall enter upon its records a description of the street after such narrowing, and the portion of the former street not included in such description is abandoned.

3. If the petition for the discontinuance of a street be granted, such street or the part thereof so discontinued is abandoned.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 148. Amended by L. 1913, Ch. 126, in effect March 25, 1913.

Editor's note. The limitation in the first subdivision was inserted by the Legislature, conforming the section in part to section 90 (now section 200), of the Highway Law.

Action for obstruction of light and air, on account of the discontinuance of a street, does not lie unless given by provisions of the charter. *Egerer v. New York, etc., R. Co.*, 2 N. Y. Supp. 69 (1888).

§ 149. Application for commissioners; notice of application.

If a petition for the laying out, alteration or widening of a street be granted, and the board can not agree with an owner upon the purchase-price of land necessary to be acquired, an application may be made by the board to the county court of the county in which such land is situated, for the appointment of three commissioners to determine the compensation to be made to such owner. At least ten days before the making of such application a notice specifying the time and place thereof must be served upon such owner.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 149.

Cross references. County court always open, see post, sec. 342; application for commissioners, see post, Form 49; notice of application, see post, Form 50.

A jury selected by the board of trustees, possessing only the qualifications required under the act for the incorporation of villages, even if assumed to be commissioners, does not meet the requirements of the law. *People v. Trustees of Haverstraw*, 151 N. Y. 75 (1896), rev'g 80 Hun, 385.

Note. This decision was rendered upon the law as it existed before the amendment made by Laws 1896, Ch. 243, which provided for the appointment of three commissioners.

§ 150. Appointment of commissioners.

Upon such application the county court must appoint as such commissioners three resident disinterested freeholders of the county in which such land is situated, not residents of the village nor nominated by a person interested in the proceeding. In case of a vacancy another commissioner may be appointed in like manner. The order of appointment must contain the name of each person whose compensation is to be determined by the commissioners.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 150.

Cross references. Order appointing commissioners, see post, Form 51.

Persons selected by trustees do not satisfy the requirements of the law. They should be appointed by a court of record. *People v. Trustees of Village of Haverstraw*, 151 N. Y. 75 (1896), rev'g 80 Hun, 385.

Order appointing commissioners is not ipso facto violated or annulled by the delay of such commissioners to act. In *Matter of Market Street*, 76 Hun, 85 (1894).

§ 151. Notice of meeting of commissioners.

The commissioners shall file with the village clerk the constitutional oath of office. They shall appoint a time and place for a

hearing and serve a notice thereof upon the board of trustees and upon each person named in the order. Such notice must be served at least ten days before the hearing, which must be held within twenty days after their appointment.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 151.

Cross references. Notice of meeting of commissioners, *see post*, Form 52.

§ 152. Meeting and award of commissioners.

The commissioners shall meet at the time and place appointed and may adjourn from time to time. They shall personally examine the land, compensation for which is to be determined by them, and may take testimony in relation thereto. They shall keep minutes of their proceedings and reduce to writing all evidence taken by them. They shall award to each owner of land named in the order the compensation to which he may be entitled after making allowance for any benefit he may derive from the improvement. After the appointment of the commissioners and before any evidence is taken on the hearing, the board may make an agreement with an owner named in the order for the compensation to be made to him. If such an agreement be made, notice thereof must be served upon the commissioners, and thereupon the proceeding as to such owner is discontinued. The award shall be signed by a majority of the commissioners, and, together with the minutes of their proceedings, the evidence taken by them, and any notice of agreement served upon them, shall be filed in the office of the village clerk.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 153.

Cross references. Notice of agreement, *see post*, Form 53; award of commissioners, *see post*, Form 54.

The measure of damages is governed by same rules that obtain in condemnation proceedings generally. *See Matter of Riverside Avenue*, 83 Hun, 50 (1894); *Matter of Forty-eighth Street*, 19 App. Div. 602, 46 N. Y. Supp. 311 (1897).

The provisions of this section are limited to consequential damages resulting to a portion of a tract not taken, and are not applicable to actual damages for land taken. *Matter of Pondfield Road*, 156 App. Div. 890.

Discontinuance of proceedings is discretionary with the court, when applied to for that purpose. In *Matter of Market Street*, 76 Hun, 85 (1894).

Statutory mode of compensation is exclusive when provided for in the act. *Reher v. Mayor, etc.*, 104 N. Y. 68 (1887).

Ascertainment of compensation by conditional appeal is not a constitutional method of assessing the damages of a land owner. *People v. Trustees of Village of Haverstraw*, 151 N. Y. 75 (1896), *rev'd* 80 Hun, 385.

The function of commissioners is confined to making the award. *People v. Trustees of Village of Haverstraw*, 132 N. Y. 88 (1893).

§ 153. Appeal from award of commissioners.

The board of trustees, or an owner to whom an award has been made by the commissioners, may, within twenty days after the filing of the award, appeal therefrom to the county court by which the commissioners were appointed. Such appeal shall be taken by a notice of appeal to be served as follows:

1. If the appeal be taken by the board of trustees, notice thereof must be filed by the village clerk in his office, and addressed to and served upon each owner to whose award objection is made by the board.

2. If the appeal be taken by an owner, the notice of appeal must be addressed to the board of trustees and served upon the village clerk.

The notice must in either case briefly state the grounds upon which the appeal is taken.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 153.

Cross references. County Court always open, see post, sec. 342; service of notice, see post, sec. 330; notice of appeal, see post, Form 55.

§ 154. Return by clerk.

Within ten days after such appeal the village clerk shall transmit to the county judge the petition filed with the board for the laying out, alteration or widening of the proposed street, all papers and evidence in the proceeding subsequently filed in his office, and a certified copy of each resolution of the board of trustees relating to the improvement.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 154.

§ 155. Hearing of the appeal.

The appeal may be brought on by either party by a notice of not less than ten nor more than twenty days. If the appeal is by the board of trustees, it brings up for review all proceedings by or before the commissioners, and the award made by them. If the appeal is by an owner, it brings up for review all proceedings relating to the proposed improvement. If the appeal is by the board of trustees, and two or more owners are made respondents, the county court may affirm or reverse the award of the commissioners as to the whole or any number of such owners; and if the appeal is by an owner, the county court may affirm or reverse the award.

If the award be reversed, the order of reversal must state the reasons therefor, and if upon grounds relating to the amount of the award, or for errors in the proceedings by the commissioners, it must direct a rehearing before the same or other commissioners.

If it appears from the order of the county court that the award is reversed solely upon grounds relating to the amount of compensation, or for errors in the proceedings by the commissioners, no further appeal shall be allowed. The order of the county court upon such appeal, together with the papers transmitted by the village clerk, must be filed by the county judge in the office of such clerk. The order must also be entered in the office of the county clerk.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 155.

Cross references. Notice to bring an appeal for hearing, see post, Form 56.

§ 156. Compensation of commissioners.

Each commissioner is entitled to five dollars for each day actually and necessarily spent in such proceeding, together with his necessary traveling and incidental expenses. Such compensation and expenses are a charge against the village.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 156.

Board of street commissioners has no power to employ an attorney and the expense of so doing is not a proper item of their "current expenses." *People v. Town*, 1 App. Div. 127 (1896), 37 N. Y. Supp. 864; following, *Collins v. Village of Saratoga Springs*, 70 Hun, 583 (1893), 24 N. Y. Supp. 234.

§ 157. Costs on appeal.

Costs on appeal may be allowed as follows:

1. If on appeal by the board of trustees the award of the commissioners be affirmed, the county court may allow to the respondent costs of such appeal, against the village, not exceeding twenty-five dollars.

2. If on such an appeal the award be reversed on the ground that as to a specified owner it is excessive, the court may fix the amount of costs, not exceeding fifty dollars, to be stated in the order, to be paid by the village to such owner, if upon a rehearing the amount awarded to him is not more favorable to the village by the amount of such costs than the first award.

3. If on appeal by an owner the award be affirmed, costs not exceeding twenty-five dollars may be awarded against him, to be recovered by the village.

4. If on such an appeal the award be reversed, the county court may allow to the owner a sum not exceeding twenty-five dollars for the costs of appeal, which shall be a charge against the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 157.

§ 158. Payment for property acquired for street improvement.

Upon the making of an agreement for compensation to an owner under this article, or upon the final order or award fixing the amount of such compensation in proceedings therefor, the board shall immediately pay such amounts and the costs, if any, allowed in such proceedings, if it has funds available for that purpose; if not, money may be borrowed and certificates of indebtedness bearing interest issued therefor, or like certificates may be issued for such amounts, and payable, in either case, not more than one year from the date thereof; and the amount of such certificates shall be included in the next annual tax levy.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 158.

§ 159. Changing grade of street or bridge.

1. If a village has exclusive control and jurisdiction of a street or bridge therein, it may change the grade thereof. If such change of grade shall injuriously affect any building or land adjacent thereto, or the use thereof, the change of grade, to the extent of the damage resulting therefrom, shall be deemed the taking of such adjacent property for a public use. A person claiming damages from such change of grade must present to the board of trustees a verified claim therefor within sixty days after such change of grade is effected. The board may agree with such owner upon the amount of damages to be allowed to him, or make to him a verified offer to settle or compromise such claim. If no agreement be made within thirty days after the presentation of the claim, the person presenting it may apply to the supreme court for the appointment of three commissioners to determine the compensation to which he is entitled. Notice of the application must be served upon the board of trustees at least ten days before the hearing thereof. All proceedings subsequent to the appointment of the commissioners shall be taken in accordance with the provisions of the condemnation law, so far as applicable, except that the commissioners in fixing their award must make an allowance for benefits, if any, derived by the claimant from

such improvement. The amount agreed upon for such damages or the award therefor, together with the costs, if any, allowed to the claimant shall be a charge against such village. Unless the award of the commissioners in favor of the claimant shall exceed the amount of the offer to settle or compromise such claim, he shall be liable for all costs of the proceeding. The board may borrow for the payment of the award, costs, amount agreed upon and expenses, or may issue certificates of indebtedness therefor, in the same manner as in case of damages for laying out a street.

2. Whenever the grade of any street, highway or bridge in any incorporated village in this state shall be changed or altered so as to interfere in any manner with any building or buildings situate thereon or adjacent thereto, or the use thereof, or shall injure or damage the real property adjoining such highway so changed or altered, the owner or owners of such building or real estate may apply to the supreme court in the judicial district in which such property is situated for the appointment of three commissioners to ascertain and determine the amount of damage sustained thereby; due notice of such application shall be given to the person or persons having competent authority to make such change or alteration. All the provisions of the condemnation law in relation to the appointment of commissioners, their powers, duties, fees and expenses, shall be applicable to the appointment of, and the powers, duties, fees and expenses of the commissioners appointed in pursuance of the provisions hereof; but it shall be the duty of said commissioners in assessing and ascertaining the damages sustained by property owners adjoining such street or highway to take into consideration and to ascertain the value of and benefits or advantages to the property in consequence of the alteration of the grade; and in all cases the value of such benefits or improvements shall be offset against and deducted from the damages; and no person or property owner shall be entitled to recover any damages who shall, in writing, request or assent that the said grade of any such street shall be changed or altered. All damages ascertained and determined under the provisions of this subdivision, together with the costs of such proceedings, shall be a charge, when allowable, upon the village, town or other municipality chargeable with the maintenance of the street, highway or bridge so altered and changed; but no property owner or person instituting proceedings to recover damages under the provisions of this subdivision shall be entitled to costs, unless the claim for such damages shall have first been presented to and rejected by, or neglected to have been adjusted for thirty days after presentation by the trustees or other proper officers of said village, town or municipality, nor in case such trustees or other proper officers shall have made an effort to settle or compromise such claim, which offer is declined by said property owner, un-

less he shall recover more than is so offered; and in case he fails to recover any damages, or less than offered, he shall be liable for the costs of such proceeding. When either party is entitled to costs under this subdivision, they shall be the same costs and at the same rates as prescribed in the condemnation law, and the court may grant an additional allowance of costs to the prevailing party at the same rates as provided by the condemnation law.

This subdivision shall not apply to the change of grade of streets, highways or bridges by village authorities.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 159, amended by L. 1901, Ch. 68.

This section in the former Village Law was derived from L. 1883, Ch. 113, as amended by L. 1894, Ch. 122, but as such act related to the change of grade of a street or bridge, in a village by authorities other than those of the village, the Statutory Revision Commission did not recommend its repeal. The Board of Statutory Consolidation, however, have included in subd. 2 all the provisions of the L. 1883, Ch. 113, and the entire act is repealed.

Right to damage for change of grade is purely statutory and is based upon the moral obligation of the municipality to pay the resulting damages. *People v. Stillings*, 134 App. Div. 480 (1909), 119 N. Y. Supp. 298.

Property "benefited." It is a question for the commissioners to determine whether property is "benefited." *People v. Lohnas*, 54 Hun, 604 (1889).

Jurisdiction of commissioners to determine whether claim was properly filed cannot be given by stipulation. *Matter of Coffrey*, 52 App. Div. 284 (1900), 65 N. Y. Supp. 470.

Grade may be established by long usage, acquiescence and recognition by the municipality. A formal ordinance is not essential. *Folmsbee v. City of Amsterdam*, 142 N. Y. 118 (1894), 66 Hun, 214; 58 N. Y. St. Rep. 626.

Section not applicable to a proceeding instituted by abutting owners. *Matter of Hoy v. Village of Salamanca*, 57 Misc. 81 (1907), 107 N. Y. Supp. 208.

Section applies to specially incorporated villages which contain no specific authority in their charter. *Matter of Grab*, 31 App. Div. 610 (1898).

This section authorizes compensation whether the change is from the natural grade or from a grade established by resolution. *Matter of Greer*, 39 App. Div. 22 (1899); see *In re Whitmore v. Village of Tarrytown*, 137 N. Y. 409 (1893).

Authority to change grade; resolution. Where the trustees of a village by resolution award a contract for changing and grading a street pursuant to certain specifications which expressly provide that the village engineer shall give the lines and grades for the work, and that it must conform thereto, such action by the trustees is equivalent to a formal resolution or ordinance directing the change of grade. *Matter of Simiele* (1916), 176 App. Div. 25, 162 N. Y. Supp. 285.

Change of grade; what constitutes. The depression of a street, from two to three feet, constitutes a change of grade within the meaning of section 159 of the Village Law, so as to entitle property owners injuriously affected thereby to damages. An abutting owner by voting at a special village election in favor of a proposition to issue bonds for the grading of a street, does not waive his right to damages. *Matter of Hunt v. Village of Otego* (1914), 160 App. Div. 158.

Change of grade; injury to vacant lot. Subdivision 1 of this section, providing for damages to adjacent land owners caused by a change of grade of a village street, authorizes a recovery, although the land injured is vacant and unimproved. *Matter of Staub v. Village of Mamaroneck* (1915), 165 App. Div. 755, 151 N. Y. Supp. 485.

Change of grade; construction of State road; recovery by property owner injured. Where the construction of a State road through a village at a higher grade necessitates the widening of an intersecting street by the village itself, an adjoining property owner whose access is interfered with cannot recover damages of the village under subdivision 1 of section 159 of the Village Law. This, because there was no change of grade made by the village itself. But

such property owner may recover damages of the village under subdivision 2 of the section aforesaid, for it authorizes a recovery for an injury caused by a change of grade not made by the village itself. *McMullen v. Village of Marlborough* (1914), 163 App. Div. 73, 148 N. Y. Supp. 504.

The word "effected" is used in the sense of "completed" and the claim must be filed within sixty days after the completion of the work contemplated in the whole improvement. *Matter of Phillips v. Village of North Pelham*, 61 App. Div. 442 (1901), 70 N. Y. Supp. 630.

To warrant appointment of commissioners, claimant must establish:

1. That the village has exclusive control and jurisdiction of the street.
 2. That it has changed the grade thereof.
 3. That the change has injuriously affected his building, the land adjacent thereto or the use thereof.
 4. That he has presented his verified claim for damages within sixty days.
- Comesky v. Village of Suffern*, 179 N. Y. 393, rev'g 83 App. Div. 137, 81 N. Y. Supp. 1049 (1903).

Diminution of rental value may be allowed as damages. *Matter of Johns v. Village of Salamanca*, 129 App. Div. 717 (1908), 114 N. Y. Supp. 707; compare, *Matter of Hoy v. Village of Salamanca*, 57 Misc. 81 (1907), 107 N. Y. Supp. 208.

Damages need not be paid before the change of grade is made. *Rogers v. Village of Attica*, 113 App. Div. 603 (1906), aff'd 188 N. Y. 625.

Remedy exclusive and where there is no closing of the street or interference with the right of access, the award of commissioners, will be confirmed as to fee damages and disallowed as to rental damages. *Matter of Hoy v. Village of Salamanca*, 57 Misc. 81 (1907), 107 N. Y. Supp. 208.

Rights of turnpike company in the streets of a village are not such as will prevent a change of grade, but the village is liable in damages for tearing up and partly destroying the turnpike. *Fayetteville, etc., Co. v. Village of Fayetteville*, 37 Misc. 223 (1902), 75 N. Y. Supp. 180.

Under the Railroad Law notice of claim for change of grade must be filed with the railroad commissioners. (Railroad Law, sec. 65.) *Matter of Malenbacker v. Village of Salamanca*, 188 N. Y. 370 (1907), aff'g 116 App. Div. 691; 101 N. Y. Supp. 1073.

Where proceedings are instituted for the construction of an undergrade crossing by a railroad company, and the village under the provisions of the Railroad Law, the owner of abutting property is entitled to damages. (Railroad Law, secs. 62-69.) *New* [91-99]. *Matter of Forge v. Village of Salamanca*, 176 N. Y. 324, rev'g 86 App. Div. 211, 83 N. Y. Supp. 672 (1903).

Petitioner not entitled to costs as a matter of right except in proceeding for the appointment of commissioners. Costs prior to that time are within the discretion of the court. *Matter of Bley v. Village of Hamburg*, 84 App. Div. 23 (1903), 82 N. Y. Supp. 35.

Benefits conferred by the paving of a newly graded street are not properly an offset to the injuries done by regrading. *Matter of Bradley* (1910), 68 Misc. 514.

Claim of damages by person who signed petition. A landowner is not estopped from claiming damages because he joined in a petition for paving the street, if at the time of his signature the plans had not been made and he was told by the village trustees that the construction would not cause any appreciable change in the grade and the paving could have been done without such change. *Matter of Stillman v. Village of North Olean* (1911), 142 App. Div. 300, 126 N. Y. Supp. 728.

Costs allowed to a landowner pursuant to this section are within the discretion of the court under section 3240 of the Code of Civil Procedure. A landowner who has been awarded damages on account of a change in the grade of a street is entitled by virtue of section 3372 of the Code of Civil Procedure to recover costs of the proceeding subsequent to the appointment of the commissioners at the same rate as is allowed to the defendant, when he is the prevailing party in an action in the Supreme Court. *Matter of Bradley* (1911), 145 App. Div. 49, 129 N. Y. Supp. 450.

Damage to estate by entirety; proceeding by tenant by entirety. Where a husband and wife are the owners of an estate by the entirety, and such land is injured by a change in the grade of a village street, the husband can insti-

tute and maintain a proceeding for an assessment of damages to such property without joining his wife, his co-tenant, as a party to the proceeding, but the damage to which he is entitled under this section should be given for the diminution of the value of his estate as a tenant by the entirety, and not as rents and profits or damages to his use and occupation. In making their report, after such appraisal, the commissioners should state that, in fixing their award, they have considered the question of benefits, but they should not itemize the award by allowing a specific sum for damage to, and loss of, shade trees as part of the damages to the fee of the premises. *Goodrich v. Village of Otego* (1915), 216 N. Y. 112, revg. 170 App. Div. 927, 154 N. Y. Supp. 1124, 160 App. Div. 349.

§ 160. Streets on boundary lines.

Whenever a street is on a line between two villages, or between a village and a city or town, the highway or street commissioners of such adjoining municipalities shall, on or before the first day of May in each year, meet at a time and place to be determined by them, and divide such street. The officers present at such meeting shall allot a part of the street to each municipality in such manner that the labor and expense of keeping such street in repair may be equal as nearly as practicable. The officers making such division shall, within ten days thereafter, file in the office of the clerk of each municipality a certificate showing the part of such street allotted to each.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 160; originally revised from L. 1870, Ch. 311.

Revisers' note (1897). L. 1870, chap. 311; R. S., 9th ed., 2314, rewritten as to villages. The original act is not repealed, as to other municipalities.

§ 161. Crosswalks and sidewalks.

The board of trustees may construct and repair crosswalks upon the streets within the village. It may also construct and repair sidewalks upon such a street wholly at the expense of the village, or of the owners or occupants of the adjoining land, or partly at the expense of each, and may prescribe the manner of doing such work, and the kind of materials to be used therein. Upon the adoption of a proposition therefor in a village of the third or fourth class, all sidewalks shall thereafter be constructed and repaired wholly at the expense of the village. If a sidewalk is so required to be constructed or repaired wholly at the expense of the owners or occupants of the adjoining lands, a notice specifying the place and manner, and the time, not less than ten days in case of a new walk, or not less than twenty-four hours in case of repairs, within which the sidewalk is required to be constructed or repaired, shall be served upon such owners or occupants. If an owner or occupant shall not construct or repair the sidewalk as required by the notice, the board of trustees may cause the same to be so constructed or repaired, and assess the expense thereof upon the adjoining land.

If a sidewalk is to be constructed or repaired at the joint expense of the village and the owner or occupant, the board of trustees may cause the same to be constructed or repaired, and assess upon the adjoining land the proportion of the expense chargeable against the same; or it may direct the owner or occupant to contribute labor or materials therefor. If the lands of a turnpike company are used as a street in a village and the company collect tolls on its road, then the expense of constructing or repairing a sidewalk on so much of the street as is owned or controlled by the turnpike company, shall be chargeable against and assessed on the turnpike company, and the owners of the adjoining land shall not be chargeable therewith.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 161, as amended by L. 1899, Ch. 326 and L. 1905, Ch. 98; originally revised from L. 1870, Ch. 291, tit. 3, sec. 4, as amended by L. 1895, Ch. 187.

Cross references. Assessments, see post, sec. 168; lien of assessment, see ante, sec. 113; liability for defects, see ante, sec. 140, note.

Revisers' note (1897). The provisions authorizing the adoption of a proposition for the construction of all the sidewalks at the expense of the village was inserted by the Legislature. So, also, was the provision fixing the minimum notice in case of repairs at not less than twenty-four hours.

Assessment void where it includes a sidewalk which had not been provided for by ordinance, and which an abutting owner had not by notice been required to construct. *Folmsbee v. City of Amsterdam*, 142 N. Y. 118 (1894), 66 Hun, 214; 58 N. Y. St. Rep. 626.

Ordinance imposing duty of repair upon adjoining owners will not relieve the corporation of liability. *Wallace v. Mayor, etc., of New York*, 2 Hilt. 440 (1859).

Construction of sidewalks by adjoining owners. Where the board of trustees adopt a resolution directing a property owner to construct a sidewalk and at the same meeting adopts a resolution providing that the sidewalks in the village "should be laid by the abutting property owners at the cost of such property owners as heretofore" the former resolution constitutes the consent required by section 162 of the Village Law, and entitles the property owner to one-half of the costs of constructing the sidewalk. *Sanford v. Village of Warwick*, 181 N. Y. 20 (1905), rev'g 83 App. Div. 120; 82 N. Y. Supp. 466.

§ 162. Credit for flagging sidewalk.

Whenever the owner or occupant of lands adjoining a street shall, with the consent of the board of trustees that the village will bear a portion of the expense of construction thereof, evidenced by a vote of such board, construct along such street a sidewalk of stone, cement, brick or other similar material to be approved by the board, of the width of four feet or more, and of the value of at least fifty-five cents per square yard, surface measure, the board of trustees shall credit such owner or occupant on account of his assessment for street taxes against the particular property along which the walk is constructed in such village a sum to be fixed by the board of trustees, not exceeding three-fourths of the actual and necessary expense of constructing such sidewalk; or, instead of such credit, may pay to such owner or occupant from the street fund of the current year a sum to be fixed by the board of trustees not exceeding one-half of the cost of such sidewalk. If credit is allowed, such owner or occupant shall be credited therewith upon the taxes which shall be assessed and levied against him for street purposes upon the particular property along which said walk is constructed until the credit is exhausted, and in event of a sale or change of ownership of any property against which a credit is in operation for the purpose mentioned, said credit is to accompany or follow title to property until the credit is exhausted. Before

the board of trustees shall so consent to bear a portion of the expense of construction of any such sidewalk, it shall fix the proportionate amount that shall be credited or paid by the village for all walks of the same kind which may thereafter, with such consent, be constructed therein; and such proportionate amounts, or either of them, may be changed from time to time thereafter by the board of trustees, but at no time within one year from the date of the last fixing or changing thereof.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 162, as amended by L. 1904, Ch. 122; originally revised from L. 1870, Ch. 291, tit. 3, sec. 22, as amended by L. 1896, Ch. 458. Amended by L. 1911, Ch. 515. In effect June 28, 1911.

Revisers' note (1897). The words "cement, brick or other similar material" are new. The section is rewritten.

Application of sections. Section 161 applies to sidewalks generally. Section 162 applies to those constructed of the materials specified therein, the consent being required to keep their costs within the control of the board of trustees. *Sanford v. Village of Warwick*, 181 N. Y. 20 (1905), rev'g 83 App. Div. 120; 82 N. Y. Supp. 466.

§ 163. Snow and ice on sidewalks.

The board of trustees may require the owners or occupants of land fronting on sidewalks to keep them clear of snow and ice, and upon default, may cause such sidewalks to be cleared, and assess the expense thereof upon such adjoining land, or may cause the sidewalks on any street or portion thereof to be kept clear of snow and ice, and assess the expense upon the adjoining land.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 163; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 16, in part, as amended by L. 1896, Ch. 743.

Cross references. Assessments, see post, sec. 168; lien of assessments, see ante, sec. 113; ordinances for clearing, see ante, sec. 90, subd. 11; liability for defect arising from, see ante, sec. 140, note.

§ 164. Cleaning streets.

The board of trustees may cause the streets of the village or any part thereof to be cleared of rubbish or other accumulations thereon, injurious to the use or appearance thereof, and to cause all grass and weeds growing therein to be cut and removed once in each month from May to October, inclusive, wholly at the expense of the village or may assess the expense thereof, in whole or in part, upon the owners or occupants of the adjoining land. It shall be the duty of the board of trustees upon the receipt of a petition signed by the majority of the taxpayers on any street or streets, to cause such street or streets to be cleared of rubbish or other accumulations thereon injurious to the use or appearance thereof and assess the expense in whole or in part as aforesaid.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 164; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 16, in part, as amended by L. 1896, Ch. 743, subd. 25, in part, as amended by L. 1893, Ch. 212.

Amended by L. 1915, Ch. 458. In effect April 28, 1915.

Cross references. Assessments, see post, sec. 168; lien of assessment, see ante, sec. 113.

§ 165. Sprinkling streets.

The board of trustees may cause the streets of the village or any part thereof to be sprinkled with water, oil or other dust-laying substance wholly at the expense of the village or may assess the expense thereof, in whole or in part, upon the owners or occupants of the adjoining land, and in villages, except in Franklin county, having a sufficient water supply, it shall be the duty of the board of trustees, upon the petition signed by a majority of the taxpayers of any street or streets, to cause such street or streets to be sprinkled with water, oil or other dust-laying substance and assess the expense thereof in whole or in part as aforesaid.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 165, as amended by L. 1904, Ch. 497; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 25, in part, as amended by L. 1893, Ch. 212. Amended by L. 1912, Ch. 125, in effect April 4, 1912.

Cross references. Lien of assessment, see ante, sec. 113; assessment, see post, sec. 168.

§ 166. Pavements and sidewalks.

The board of trustees may cause a street in the village, or part thereof, to be graded or the sidewalk to be constructed of stone, cement, brick or similar substance or flagged or curbed or the street paved, or any one of more of such acts performed wholly at the expense of the village, or of the owners of the adjoining land, or partly at the expense of each; but such street shall not be so graded, flagged or constructed as above provided or curbed or paved wholly at the expense of the owners of the adjoining land, unless a petition therefor be presented to the board of trustees signed by the owners of at least two-thirds of the frontage on the street, or portion thereof, proposed to be so improved, if the improvement is to consist of grading or curbing or paving, and by the owners of more than one-half of the frontage on the street or on the side thereof proposed to be improved if the improvement consists of flagging or otherwise constructing a sidewalk as above provided, and a hearing given thereon to all persons interested, on a notice of at least ten days. If such improvement is so required to be constructed or repaired wholly at the expense of the owners of the adjoining lands, a notice specifying the

place and manner, and the time, not less than thirty days, within which the said improvement is required to be constructed or repaired, shall be served upon the owners. If an owner shall not construct or repair the street as required by the notice, the board of trustees may cause the same to be so constructed or repaired, and assess the expense thereof upon the adjoining land. If a street is to be so improved, constructed or repaired at the joint expense of the village and the owner of the adjoining land, the board of trustees may cause the same to be constructed or repaired, and assess upon the adjoining land the proportion of the expense chargeable against the same; or it may direct the owner to contribute labor or materials therefor. The total amount expended for street paving in any fiscal year from the moneys raised during such year, for street purposes, otherwise than in pursuance of a village election, shall not be more than one-half thereof. No land owner shall be required to grade, flag, construct sidewalk, curb or pave or bear the expense of so doing any portion of the street not in front of such land, nor beyond the center of the street. All grading done or flagging or sidewalk laid or curb set or pavements laid by the owners of adjoining land shall be laid under the supervision and in accordance with the directions of the board of trustees. The expense of constructing a pavement or of grading done or flagging or sidewalk laid or curb set or any part thereof may be raised in an entire amount or in smaller amounts from time to time, as the board of trustees may determine. If any portion of such expense is to be borne by the village, bonds or certificates of indebtedness may be issued. If such expense or any part thereof is to be assessed upon adjoining land, the board of trustees may apportion it upon the lands and assess the same as a whole or by installments. Notice of an assessment based upon such apportionment shall be given to the land owners, who may pay the amounts assessed within ten days after such notice. At the expiration of that time bonds or certificates of indebtedness may be issued for the aggregate amount of such assessment then remaining unpaid. Taxes for the amount of such bonds or certificates issued on account of default in the payment of the amount apportioned upon the adjoining land shall be levied and collected in the manner prescribed by this chapter in case of unpaid assessments for the construction of sewers.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 166, as amended by L. 1898, Ch. 365; L. 1906, Ch. 97; L. 1907, Ch. 44, and L. 1908, Ch. 461; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 25, in part, as amended by L. 1893, Ch. 212.

Amended by L. 1909, Ch. 430, in effect May 21, 1909.

Latter part of section added by L. 1898, Ch. 365.

Cross references. Service of notice, see post, sec. 311; assessments, see post, sec. 168; lien of assessment, see ante, sec. 113.

Revisers' note (1897). The provisions of the act of 1870, relating to pavements, are very incomplete, but are fully covered by the foregoing section.

Editor's note. The provision that a street should not be paved wholly at expense of adjoining owned without a petition, etc., was inserted by the Legislature.

Cement sidewalk is not within the meaning of section 166 of the Village Law (L. 1897, p. 422, Ch. 414), as amended by Ch. 97, p. 185 of L. 1906. *Aliter v. Village of St. Johnsville*, 130 App. Div. 297 (1909), 114 N. Y. Supp. 355.

The intent of the legislature was to limit the liability of the owner to that which was in front and did not include the paving of the intersecting streets. *O'Leary v. City of Glens Falls* (1910), 200 N. Y. 218, 222, aff'g 128 App. Div. 683, 112 N. Y. Supp. 932.

§ 167. Trimming trees.

The board of trustees may require the owners of land to trim the trees in front thereof, and upon default, may cause such trees to be trimmed, and assess the expense thereof upon the adjoining land.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 167.

This section was new in former Village Laws.

Cross references. Assessments, see post, sec. 168; lien of assessment, see ante, sec. 113; action for injury to tree, Code Civ. Pro., secs. 1667, 1668.

§ 167-a. Appropriations for shade trees.

In any incorporated village having no board of public works the board of trustees of such village may, by resolution, appropriate from the general or street funds, in any one year, a sum not to exceed two hundred dollars to be known as the "shade tree fund." Such fund shall be expended for the setting out or preservation of shade trees along the public streets of such village in such manner as the board of trustees may direct.

Derivation. Added by L. 1915, Ch. 438. In effect April 28, 1915.

§ 168. Local assessment under this article.

Whenever expenditures are made by the board of trustees for constructing or repairing sidewalks or pavements, trimming trees, sprinkling streets or keeping the sidewalks or streets cleared of weeds, ice, snow or other accumulations thereon, which under this article are assessable upon the land affected or improved thereby, the board shall serve a notice of at least ten days upon the owner or occupant of such property, stating that such expenditure has been made, its purpose and amount, and that at a specified time and place it will meet to make an assessment of the expenditure

upon such land. The board shall meet at the time and place specified. It shall hear and determine all objections that may be made to such assessment, including the amount thereof, and shall assess upon the land the amount which it may deem just and reasonable, not exceeding, in case of default, the amount stated in the notice.

If the amount so assessed be not paid within twenty days after such assessment, an action to recover the amount may be maintained by the village against the owner or occupant liable therefor, or a special warrant may be issued by the board of trustees for the collection of such assessment, or the amount thereof may be included in the next annual tax levy.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 168.

This section was new in former Village Laws.

The act of 1870 made no provision for a hearing on local assessments.

Assessments are laid in the exercise of the taxing power and not that of eminent domain. *Dyker v. Meadow Land, etc., Co.*, 3 App. Div. 164 (1896), 38 N. Y. Supp. 222; *aff'd* 159 N. Y. 6.

Provisions of the statute must be strictly pursued and any substantial departure therefrom will vitiate the entire proceedings. *Merritt v. Village of Port Chester*, 71 N. Y. 309 (1877), *rev'd* 8 Hun, 40; *Miller v. City of Amsterdam*, 149 N. Y. 288 (1896), *aff'd* 78 Hun, 609. A substantial and not a literal compliance is required. *Bell v. City of Yonkers*, 78 Hun, 197 (1894), *aff'd* 149 N. Y. 581.

Where substantial portion void the entire assessment may be so treated. *Hooker v. City of Rochester*, 30 N. Y. Supp. 297 (1893).

Notice of hearing indispensable, and failure to give will render assessment void. *People v. New Rochelle*, 83 Hun, 185 (1894), 31 N. Y. Supp. 592.

Substantial error must be shown to warrant setting assessment aside. *Bell v. City of Yonkers*, 78 Hun, 196 (1894), 22 N. Y. Supp. 947, *aff'd* 149 N. Y. 581.

Omission of property within the district is good ground for setting the assessment aside. *Bell v. City of Yonkers*, 78 Hun, 196 (1894), 28 N. Y. Supp. 947, *aff'd* 149 N. Y. 581.

Where assessment is void in its inception it may be set aside although objection was made at the hearing upon which it was confirmed. *Miller v. City of Amsterdam*, 149 N. Y. 288 (1896), *aff'd* 78 Hun, 609.

Where assessment is paid without knowledge of the facts which render it void, proceedings, it may be recovered. *Boas v. Mayor, etc., of New York*, 131 N. Y. 311 (1895), 66 N. Y. St. Rep. 398; 32 N. Y. Supp. 967.

Assessment for street paving cannot be collaterally attacked by the trustees of the village proceed regularly and have jurisdiction over the person and the subject matter assessed. *City of Glens Falls v. M'Mullen*, 134 N. Y. 134 (1909), 116 N. Y. Supp. 49.

An assessment for local improvement is not a tax within the meaning of a charter authorizing a municipal corporation to sell lands for any description." In *Matter of Mayor, etc., of New York*, 131 N. Y. 1814; *Bleecker v. Ballou*, 3 Wend. 263 (1829); *Sharp v. Spang*, 4 Hill, 92 (1843); *Sharp v. Johnson*, 4 Hill, 92 (1843).

Judgment against cemetery association may be recovered as a lien upon the land if at any time to be used. *Gouverneur Village v. Gouverneur, etc., Ass'n*, 131 N. Y. 221 (1909).

§ 169. Acquisition of lands for parks, squares, athletic fields and playgrounds.

The board of trustees may, on behalf of the village, accept by grant or devise a gift of land for a public park, square, athletic field

or playground, within the village, or wholly within three miles of the boundaries thereof, or may submit to a village election a proposition to purchase land so located for such purpose at an expense, specified in the proposition, specifying the maximum amount to be paid therefor and the mode of raising such amount. If the proposition be adopted, the board may purchase such land accordingly, or, if unable to agree with the owners for the purchase thereof, may acquire title thereto by condemnation; but if the commissioners appointed in the condemnation proceedings shall fix the value of the land at a larger amount than authorized to be paid therefor by such election, the condemnation proceedings shall be abandoned and the costs of the defendants shall be paid by the village unless payment of such larger amount shall be authorized at a village election. The board of trustees may lease in the name of the village lands within the village for a public park, athletic field or playground and may equip the same with suitable buildings, structures and apparatus and may thereafter maintain and improve the same at the expense of the village, but such lease shall not be made for a longer period than five years nor at an expense for each fiscal year exceeding one mill on every dollar of taxable property of the village as appears on the last preceding village assessment-roll unless authorized at a village election. The amount of such rent shall be paid in annual instalments commencing with the date of the lease. Upon the acquisition of land for the purposes of this section, either by gift, purchase or lease, the board may establish and maintain the same for its intended purposes and shall have the power to perform all the duties of a separate board of park commissioners as provided for in this chapter.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 169; originally revised from L. 1888, Ch. 525.

Amended by L. 1909, Ch. 469 and L. 1916, Ch. 42, in effect March 15, 1916.

There is no governmental duty to provide parks, pleasure grounds, etc. *Gartland v. New York, etc., Soc.*, 120 N. Y. Supp. 24 (1909).

§ 169-a. Acquisition of real property by gift, for municipal purposes.

The board of trustees on behalf of the village may accept a gift by bequest, grant or devise of a site or building, or both, for municipal purposes.

Derivation. Added by L. 1915, Ch. 392. In effect April 28, 1915.

§ 170. Lighting and care of streets and roads in certain subdivisions.

Whenever prior to the incorporation of any village now or hereafter incorporated, any portion of the territory subsequently included within the limits of such village has been subdivided on a map or plan thereof into building lots and designated as a park or by any other name, such portion of said territory being hereinafter designated as a "subdivision," and in such subdivision streets or roads are laid out not less than fourteen feet in width, which the board of trustees of said village is unable to accept by dedication because such streets are too narrow, or for any other reason, or where in any such case said board of trustees is willing to light and care for such streets and roads without the same be-

ing dedicated, and more than fifty dwelling houses shall have been constructed in said subdivision, the board of trustees of said village may provide for the lighting and care of such streets and roads, or any part thereof, in like manner as the other streets and roads, or any part thereof, in like manner as the other streets and roads of said village, provided that the amount expended annually for such purposes shall not exceed one-fourth of one per centum of the assessed value of the real property in said subdivision.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 170, as added by L. 1907, Ch. 93.

Section not unconstitutional as violating provision relating to village lending its aid to private individual or incurring indebtedness except for village purposes. *Smith v. Smythe*, 116 N. Y. Supp. 1071 (1909).

§ 171. Dedication of land for parkway.

An owner of land in a village of the fourth class containing a territory of less than one square mile or in a village adjacent in part to such a village and having one or more streets connecting and leading into the streets or parkways of such village, who has laid out a street or streets thereon may dedicate such street or streets, or any part thereof, or an easement therein, to the village for a parkway or parkways, upon such terms, conditions, considerations, restrictions, and reservations as he may elect to impose upon such dedication. Upon an offer in writing by the owner to make such dedication, the board of trustees shall meet to consider the matter; and it may, by resolution, determine to accept such dedication upon the terms, considerations, conditions, restrictions and reservations set forth in such dedication. Upon the adoption of such resolution the owner may execute and deliver to the village clerk a proper conveyance of the land within said street or streets to be dedicated, or of an easement therein, as the case may be, setting forth the terms, considerations, conditions, restrictions, and reservations upon which said dedication is made. Thereupon said village shall hold said lands only as a parkway or parkways and may improve the same, subject to such terms, considerations, conditions, restrictions and reservations and subject also to such rules and regulations as the board of trustees of such village from time to time shall adopt for the care thereof and for restricting or excluding from the use thereof not inconsistent with said terms, considerations, conditions, restrictions, and reservations in said dedication set forth. Provided, however, and only provided that as to each and every resident in any such village and as to each and every freeholder, owner of any land therein, his heirs, grantees, and assigns, the right of access in and over any such street, and any and all other easements therein, shall be as full and complete as if the said land had been dedicated as and for a public street. (Amended by L. 1918, Ch. 399, in effect April 30, 1918.)

Derivation. L. 1901, Ch. 624, sec. 1.

§ 172. Village may acquire street for parkway.

Any such private street or streets or easements therein may be acquired by any such village for the purpose of a parkway or parkways to be held by any such village as provided by section one hundred and seventy-one of this chapter, and subject to the rules and regulations of the board of trustees and to the rights of the freeholders and residents in said village as therein provided. Such street or streets may

be thus acquired for such parkway or parkways in the manner and as set forth in sections one hundred and forty-five to one hundred and fifty-eight both inclusive of this chapter for laying out, widening, acquiring or discontinuing a street in a village. Whenever in any such village in a county adjoining a city of the first class private streets have been heretofore dedicated or conveyed as public streets, contiguous to or continuations of parkways dedicated in accordance with section one hundred and seventy-one of this chapter, and in the opinion of the board of trustees, the said streets ought to be included in and form part of the system of parkways created by any such parkway dedication, the board of trustees may upon a petition signed by a majority in value, according to the last preceding village assessment-roll, of abutting property owners upon any such street, by resolution of said board, enter into a contract with abutting property owners, upon such consideration therefor as the board of trustees may determine, which shall be not less than at the rate of one hundred dollars for each thousand lineal feet of street, by which contract the board of trustees may bind the village to convey to any abutting property owner upon demand and upon payment of the consideration therefor in the proportion of the frontage owned by any such abutting property owner, the fee to the middle of the street, subject to an easement in the village to control and maintain the same as parkways, upon identically the same conditions, restrictions, and reservations, in every respect, imposed upon such existing parkways, by the grantor thereof in dedicating the same. Upon the adoption of any such resolution by the board of trustees, the street or streets named or described in such resolution shall thereupon become parkways, subject to identically the said same conditions, restrictions, and reservations in every respect, as those imposed upon such existing parkways, with the same rights to each abutting property owner to enjoy and enforce the same, in every respect, as possessed by abutting property owners upon such existing parkways, and in every respect the same as if such streets had originally been dedicated or conveyed, not as streets, but as parkways, subject to such conditions, restrictions, and reservations; and thereafter the board of trustees upon demand of any such abutting property owner and upon the payment of the consideration determined upon by said board and named in such resolution, in proportion to his frontage upon said parkway, must cause a conveyance to be executed by its president, granting and conveying to any such abutting property owner the fee to the middle of the street in front of his property, subject to said easements as aforesaid in the village for parkway purposes, and subject to the same rights of the village in every respect, possessed by the village in such existing parkways.

Derivation. L. 1901, Ch. 624, sec. 2.

Amended by L. 1914, Ch. 207, in effect Apr. 7, 1914.

§ 173. Village board may improve dedicated streets.

Upon the acquisition of any such village of any private street or streets for a parkway or parkways as provided by either sections one hundred and seventy-one or one hundred and seventy-two of this chapter, the board of trustees of any such village shall have authority

to improve the same as a parkway or parkways, subject only to the rights and easements hereby conferred upon any such resident or freeholder within said village to use the same as streets as fully as if the same had been dedicated or acquired as streets and to the terms, conditions, restrictions and reservations in any such dedication contained, and the board of trustees shall maintain and shall construct and repair driveways through and upon any such parkway or parkways, may construct and repair crosswalks upon any such driveways, may construct and repair sidewalks and sidewalk lawns along and upon any such parkways, may cause such sidewalks to be kept clear of snow and ice and sidewalk lawns to be kept properly trimmed, may keep the land within such driveways clear of rubbish or other accumulations thereon, injurious to the use or appearance thereof, and may cause all grass or weeds growing therein to be cut and removed once in each month from May to October, inclusive, may cause such driveways or any part thereof to be sprinkled, and may plant trees and keep the trees within the said lawns or any such parkway or parkways trimmed, and may construct, repair and maintain a sewerage system and sewers through said parkways and permit the same to be used by abutting property owners; and the board of trustees may cause the expense of the proceeding to acquire any such street or streets for the purpose of such parkway or parkways, and the expense for improving or repairing any such driveway, crosswalk or sidewalk, and the expense of removing snow and ice from any such sidewalk, and the expense of keeping such sidewalk lawns properly cut and trimmed, and the expense of cleaning and sprinkling any such driveway and planting and trimming the trees in any such parkway, and the expense of constructing, repairing and maintaining any such sewerage system and sewers, to be paid wholly by the village, or wholly by the owner of the adjoining land, or partly by each, and the provisions of section one hundred and sixty-eight of this chapter shall be applicable to any such expenditures made by the board of trustees of any such village and assessed upon the land affected or improved thereby.

Derivation. L. 1901, Ch. 624, sec. 3.

§ 174. Franchise rights in streets not to be included.

In any proceeding authorized by section one hundred and seventy-two of this chapter to acquire any such street or streets for the purpose of a parkway or parkways in the manner and as set forth in sections one hundred and forty-five to one hundred and fifty-eight of this chapter the village may exclude from the right sought to be acquired any property rights in any franchises theretofore granted in any such street or streets and any property rights in any mains or pipes existing under the surface of any such street or streets, and when so excluded the value of said property rights in any such franchises and in any such mains or pipes shall form no part of the damages to be paid for the rights or easements sought to be acquired by the village in such proceedings for the purposes in the last three sections set forth.

Derivation. L. 1901, Ch. 624, sec. 4.

ARTICLE VII.

THE POLICE DEPARTMENT.

- Section 180.** Jurisdiction of violations of ordinances.
181. Disposition of penalties; fees of justices.
182. Criminal jurisdiction of police justice.
183. Record of police justice.
184. Compensation of police justice.
185. Accounts, reports and payments of fees and fines by salaried police justice.
186. Civil jurisdiction of police justice.
187. Acting police justice.
188. Village policemen.
188a. Police department.
189. Powers and duties of policeman.
190. Fees, salaries and expenses of policeman.

§ 180. Jurisdiction of violations of ordinances.

Jurisdiction to hear, try and determine charges of violations of village ordinances is hereby conferred upon magistrates as follows:

1. A police justice, or in case of his absence or inability to act, the acting police justice has exclusive jurisdiction, in the first instance.

2. In case of the absence or inability to act of both the police justice and the acting police justice, or if the office of police justice does not exist in the village, a justice of the peace of a town including any part of the village has jurisdiction exclusive of any other justice of the peace.

3. In cases not provided for in the foregoing subdivisions, any justice of the peace has jurisdiction.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 180; originally revised from L. 1870, Ch. 291; tit. 5, sec. 3, in part, as amended by L. 1882, Ch. 313.

Justice of peace has no jurisdiction to try criminal cases if the office of police justice has been established. *People v. Whitney*, 24 Misc. 264 (1898), 53 N. Y. Supp. 570, *aff'd* 32 App. Div. 144.

§ 181. Disposition of penalties; fees of justices.

Every penalty imposed by a justice of the peace for the violation of a village ordinance shall be paid to the village treasurer. In such cases the fees of the justice are a village charge.

See Cook's Annotated Criminal Code and Penal Law; Bender's Criminal Code and Penal Law; Bender's Justices' Manual; Joyce on Indictments; Joyce on Liquors; Huddy on Automobiles.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 181; originally revised from L. 1870, Ch. 291, tit. 5, sec. 3, in part, as amended by L. 1882, Ch. 316.

§ 182. Criminal jurisdiction of village police justice.

The police justice of a village may hold a court of special sessions therein and shall have in the first instance exclusive jurisdiction to hear, try and determine charges of a misdemeanor committed within such village and triable by a court of special sessions, subject to the right of removal, as provided by the code of criminal procedure, to a court having authority to inquire by the intervention of a grand jury into offenses committed within the county. Such police justice shall have exclusive jurisdiction to take the examination of a person charged with the commission in such village of a crime not triable by a court of special sessions; and also to hear, try and determine charges against a person of being a vagrant or disorderly person within such village, or of having committed disorderly conduct therein; and to take such proceedings in either of such cases as may be taken by a justice of the peace, with all the powers and subject to all the duties and liabilities of a justice of the peace in respect thereto. Such police justice shall have all the power and authority, and be subject to all the duties and liabilities, of a justice of the peace in issuing warrants for the arrest of a person charged with the commission of a crime or disorderly conduct, in a county including any portion of such village, but if the offense is charged to have been committed outside of the village, the person arrested by such process shall be taken before another magistrate of the town in which such offense is charged to have been committed, and the papers upon which such process was issued shall be delivered to him, who shall proceed thereon as though such warrant had been issued by him upon such papers. A person arrested upon a criminal warrant issued by a justice of the peace upon a charge of committing a crime or an offense of a criminal nature within a village, shall be taken before the police justice of such village, and the papers upon which the process was issued delivered to him, who shall proceed thereon as though such warrant had been issued by him upon such papers. The term "proceeding" as used in this article also includes a special proceeding of a criminal nature.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 182; originally revised from L. 1870, Ch. 291, tit. 3, sec. 17, in part, as amended by L. 1891, Ch. 160, L. 1875, Ch. 514, sec. 2, in part, as amended by L. 1876, Ch. 308.

Cross references. Jurisdiction of police courts, see Code of Crim. Pro., sec. 74; misdemeanors triable by Court of General Sessions, see Code Crim. Pro., sec. 56; arrest under ordinances, see post, sec. 338; election of police justice, see ante, sec. 47; police justice in office continued, see post, sec. 351.

Justice of peace has original jurisdiction of misdemeanors if the office of police justice has not been established. *People v. Lovell*, 21 Misc. 570 (1897), 48 N. Y. Supp. 879.

Constitutionality of special acts relative to the powers of a police justice. See *People ex rel. Holmes v. Lane*, 53 App. Div. 531 (1900).

§ 183. Records of police justice.

The board of trustees shall provide the police justice with suitable books in which he shall keep a record of all actions or proceedings for violations of village ordinances and of criminal actions and proceedings, had or tried before him, or in a court of special sessions, held by him, which record in each case shall contain the names of the complainant and defendant, a statement of the nature of the offense charged and, under the proper dates, the proceedings therein, the minutes of all courts of special sessions held by him, and an accurate account of all fines, penalties, fees, expenses and costs imposed, received or ordered paid by him, in all such actions and proceedings.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 183; originally revised from L. 1875, Ch. 514, sec. 3, as amended by L. 1883, Ch. 118.

§ 184. Compensation of village police justice.

If the police justice of a village shall not be paid a salary, he shall be entitled to receive for his services the same fees as a justice of the peace for like services, to be paid in like manner, except that his fees in proceedings on account of violations of the village ordinances, shall be paid by the village.

The board of trustees may determine that the police justice shall be paid a salary instead of fees, and may fix the amount thereof, and such salary shall not be increased or diminished during his term of office. Such salary shall be paid in equal monthly installments by the treasurer, except that a ratable proportion shall be deducted from his salary, because of any failure to perform his duties. The amount of such deduction shall be determined by the board of trustees and paid by the treasurer to the acting police

justice or other justice who shall have acted during such period. Such police justice and acting police justice shall each report to the board of trustees at the first regular meeting thereof in each month, the time, if any, during the next preceding calendar month that the police justice of such village failed to perform the duties of his office and the time during which the acting police justice or other justice performed such duties.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 184; originally revised from L. 1870, Ch. 291, tit. 3, sec. 19, in part, as added by L. 1871, Ch. 688, and amended by L. 1886, Ch. 616.

Cross references. Compensation, see Code Crim. Pro., sec. 78.

Discretionary with board of trustees to determine whether justice shall be entitled to a salary or fees, and such discretion will not be interfered with by the court. *Goring v. President, etc., of Wappinger Falls*, 83 Hun, 130 (1894), 31 N. Y. Supp. 758, *aff'd* 144 N. Y. 616.

Increase of salary after re-election. As this section, while empowering the trustees of a village to provide a salary for the police justice instead of fees, also states that "such salary shall not be increased or diminished during his term of office," the trustees of the village are without power to increase the salary of a police justice who has been re-elected, from \$50 a month to \$1,000 a year by a resolution passed four days after his new term of office began. This is true although the justice had as yet received no salary for his new term of office, as his right thereto accrued when the term of office began. *Andrews v. Pierson* (1916), 174 App. Div. 478, 160 N. Y. Supp. 542.

§ 185. Accounts, reports and payments of fees and fines by salaried police justice.

If the police justice of the village is paid by salary, he shall not receive for his own benefit any fees, costs or expenses in any action or proceeding, but shall demand and receive the same fees, costs and expenses therein, as are provided by law to be paid to a justice of the peace of a town, and shall keep an account thereof and of fines and penalties paid to him. All such costs, fees and expenses and all penalties or other money so paid to him in a proceeding for or on account of a violation of an ordinance of the village during any calendar month shall be paid to the village treasurer before the first regular meeting of the board of trustees in the next succeeding month. All other fees, costs, expenses, fines or penalties so collected shall be paid over and accounted for in the same manner as moneys collected by a justice of the peace in like cases. He shall, prior to such meeting in each month, file with the village clerk a complete, detailed and verified statement of all moneys payable to the village treasurer, which were received by him during the last preceding month, with the written receipt of the treasurer therefor attached thereto. No order for the salary of such police justice shall be drawn until such monthly statement and receipt are filed with the clerk. He shall keep an account of all fees in criminal actions and proceedings, which would be payable to him if he were not paid a salary, and which are a town or county charge, and shall present claims for such

fees against the town or county to which chargeable. All orders or warrants for such claims shall be made payable to the treasurer of the village, who shall collect the amount thereof.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 185; originally revised from L. 1870, Ch. 291, tit. 3, sec. 19, in part, as amended by L. 1871, Ch. 688, and amended by L. 1886, Ch. 616, tit. 5, sec. 3, in part, as amended by L. 1882, Ch. 316; L. 1875, Ch. 514, sec. 2, in part, as amended by L. 1876, Ch. 308.

Payment by town of fees which are a town charge, where police justice receives a salary. *People v. Sutphin*, 53 App. Div. 613 (1900), 66 N. Y. Supp. 49.

The fees of a village police justice for services rendered in connection with the trial of offenders charged with violation of section 625 of the Education Law, are a charge against the town in which the village is located. Opinion of State Comptroller (1917), 11 State Dept. Rep. 580.

§ 186. Civil jurisdiction of police justice.

The police justice shall have the same jurisdiction as a justice of the peace of a town in civil actions. The town clerk of each town in which a village or any part thereof is situated shall furnish to such police justice jury lists in the same manner as to the justices of the peace of his town.

Amended by L. 1911, Ch. 501, in effect June 28, 1911.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 186; originally revised from L. 1870, Ch. 291, tit. 5, sec. 3, in part, as amended by L. 1882, Ch. 316; L. 1881, Ch. 616, sec. 3, as amended by L. 1881, Ch. 690. Amended by L. 1911, Ch. 501, in effect June 28, 1911.

The jurisdiction of a village police justice in civil cases is concurrent with the justices of the peace within the limits of the village. Rept. of Atty.-Gen., Feb. 21, 1912.

The amendment of 1911, providing that a police justice in a village shall have the same jurisdiction as a justice of the peace of a town in civil actions, does not broaden the powers of a police justice to include the solemnization of marriages. Rept. of Atty.-Gen., Jan. 19, 1912.

This section, as amended, confers on police justices in villages concurrent jurisdiction with justices of the peace in civil cases. A police justice in receipt of a salary is entitled to retain for his own use the same fees in civil cases which a justice of the peace is entitled to retain. (Opinion of State Comptroller, July 1, 1916), 9 State Dept. Rep. 514.

§ 187. Acting police justice.

The board of trustees of a village in which the office of police justice is established shall designate a justice of the peace residing in the village, if any, and otherwise, a justice of the peace residing in the town in which the village or a part thereof is situated, as acting police justice of the village. During the absence or inability of the police justice to perform the duties of his office, the acting police justice has all the powers and is subject to all the liabilities of a police justice within the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 187; originally revised from L. 1875, Ch. 514, sec. 2, in part, as amended by L. 1876, Ch. 308.

§ 188. Village policemen.

The president, each trustee and the street commissioner are ex-officio members of the police department, and have all the powers

conferred upon policemen by this article. The board of trustees, or if a municipal board continued by section sixty-nine now acts as police commissioners, such board may appoint and fix the terms, not extending beyond the current official year, of one or more village policemen, one of whom may be designated as chief of police.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 188; originally revised from L. 1870, Ch. 291, tit. 2, sec. 4, tit. 3, sec. 3, subd. 3, as amended by L. 1883, Ch. 153, tit. 5, sec. 4, as amended by L. 1896, Ch. 457.

Cross references. Extra force to suppress mobs, etc. See Code Crim. Pro., secs. 101, 106-110.

§ 188-a. Police department.

The board of trustees of any village of the first class or of any village in a county adjoining a city of the first class, or if the municipal board continued by section sixty-six acts as police commissioners, such board may, instead of appointing policemen for fixed terms pursuant to section one hundred and eighty-eight; by resolution, establish a police department in such village, and appoint a chief of police and such number of policemen as may be needed, and fix their compensation. No person shall be eligible to membership in such police force who shall not be a citizen of the United States, who shall have been convicted of felony or who shall be unable to read or write understandingly the English language. No person shall be appointed a member of such police force who is over the age of forty-five years, nor continue to act as such after reaching the age of sixty-five years; provided, however, that village policemen who are over the age of forty-five years and under the age of sixty-five years at the time of the organization of such police department shall be eligible for appointment in such department. Except as provided by this section a member of such police force shall continue in office unless suspended or dismissed. A member found guilty upon charges, after notice and opportunity to be heard in his defense, of neglect or dereliction in the performance of official duty, or violation of rules and regulations, or disobedience of orders, or absence without leave, or other breach of discipline, or incompetency to perform official duty, or an act of delinquency seriously affecting his general character or fitness for office, may be punished by the board of trustees or other municipal board having jurisdiction, by reprimand, forfeiture and the withholding of salary or compensation for a specified time not exceeding twenty days, suspension from duty for a specified time not exceeding twenty days and the withholding of salary or compensation during such suspension, or by dismissal from the force. The dismissal of a member of the force, however, shall be subject to review by certiorari.

Derivation. Added by L. 1915, Ch. 479, and amended by L. 1916, Ch. 145; L. 1917, Ch. 359, and L. 1918, Ch. 358, in effect April 30, 1918.

§ 189. Powers and duties of policemen.

The policemen so appointed shall have all the powers and be subject to the duties and liabilities of constables of town in serving process in any civil action or proceeding. Said policemen shall have power to execute any warrant or process issued by justices of the peace of the county or counties in which such village is situated.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 189, as amended by L. 1907, Ch. 471; originally revised from L. 1870, Ch. 291, tit. 5, sec. 4, as amended by L. 1896, Ch. 457.

Cross references. Free use of railroads, telegraph and telephone lines. See General Municipal Law, secs. 206, 207.

§ 190. Fees, salaries and expenses of policemen.

The board of trustees may determine that each village policeman shall be paid a salary instead of fees and may fix the amount thereof. A village policeman shall receive the same fees as constables of towns for similar services, to be paid in like manner, except that his fees for services in proceedings on account of a violation of a village ordinance shall be paid by the village. If a village policeman receives a salary all fees collected or received by him belong to the village and he must account therefor and credit the same upon his salary, except those fees received for the execution of all process, civil or criminal, outside of the corporate limits of the said village. A village policeman shall not receive any present or reward for his services other than his fees or salary, except by the consent of the board of trustees. Every village policeman who receives a salary from the village for his services shall keep a book in which shall be entered all services performed by him, which are a town or county charge, and shall present claims therefor against the town or county to which chargeable. All orders or warrants for such claims, except those hereinabove specified, shall be made payable to the village treasurer, who shall collect the amount thereof.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 190, as amended by L. 1907, Ch. 471; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subd. 3, as amended by L. 1883, Ch. 153, tit. 5, sec. 4, as amended by L. 1896, Ch. 457.

Where village policemen are paid salaries, the village is not entitled to collect from the town the statutory fees for arrests, attending court, custody of prisoners, etc. Opinion of State Comptroller (1917), 11 State Dept. Rep. 586.

Rejection of claims may be reviewed by the court upon writ of certiorari issued within four months after adjournment of the board. *People v. Sutphin*, 166 N. Y. 163 (1901), modifying 53 App. Div. 613; 66 N. Y. Supp. 49.

ARTICLE VIII.

THE FIRE DEPARTMENT.

Section 200. General powers of the board of fire commissioners.

201. Ordinances.

202. Organization of companies.

203. Incorporation of fire department.

204. Election of company officers and delegates.

205. Chief engineer and assistant engineers.

206. Council of fire department.

207. Meetings of fire department.

208. Duties of chief engineer and assistants.

209. General exemptions of firemen.

210. Annual report of the fire commissioners.

§ 200. General powers of the board of fire commissioners.

The board of fire commissioners of a village,

1. Has the care, custody and control of all property belonging to the fire department.

2. May purchase fire engines, hose, hose carts, horses, tools, implements and apparatus suitable and necessary to prevent and extinguish fires within the village, and keep the same in good condition and repair.

3. May erect and maintain suitable and necessary buildings for the fire department.

4. May construct and maintain reservoirs and cisterns and supply them with water for use at fires.

5. May adopt rules for the admission, suspension, removal and discipline of the members, officers and employes of the fire department, may prescribe their powers and duties, and fix their compensation.

6. Has the control and supervision of the members, officers and employes of the department, may direct their conduct at fires, and prescribe methods for extinguishing fires.

7. May appoint persons other than members or officers of the department to take charge of the property of the department, and may fix their compensation.

8. May, in villages of the first or second class, appoint not more than twenty duty or "call men," and fix their duties and compensation.

9. May inquire into the cause and origin of fires occurring in the village, and may take testimony in relation thereto.

10. May, by resolution, authorize residents of described territory outside of the village to become members of the fire department of the village, with all the powers, duties and privileges of such members, if such territory is afforded fire protection by the fire department of the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 200; originally revised from L. 1870, Ch. 291, tit. 3, sec. 3, subds. 11, 12 and 13, as amended by L. 1874, Ch. 474; mostly new.

Subd. 10 added by L. 1916, Ch. 248, in effect April 18, 1916.

Quorum. See General Construction Law, sec. 41.

§ 201. Ordinances.

The board of fire commissioners may adopt ordinances for the following purposes:

1. To protect and preserve the property and apparatus of the department.

2. To prevent danger from fires and to protect property exposed to destruction or injury by fire.

3. To provide for pulling down, blowing up and the removal of buildings and property to arrest the progress of fires or extinguish the same.

The board may enforce observance of such ordinances by the imposition of penalties.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 201.

This section was new in former Village Law.

Cross references. When ordinances take effect, see ante, sec. 95; approval by board of trustees, see ante, sec. 94; violation of ordinances, see ante, sec. 93.

§ 202. Organization of companies.

The board of fire commissioners may organize and maintain fire, hose, protective, and hook and ladder companies, whenever in its judgment the public interests require, by appointing a sufficient number of suitable persons as members thereof, respectively, not exceeding sixty to each fire company, sixty-five to each hook and ladder company and thirty to each hose company or protective company. In villages having a population of eighteen hundred or over, hose companies may have a membership of not exceeding fifty members. Vacancies shall be filled by the board of fire commissioners upon nomination by the company. No new appointment shall be made to a company, unless the number of members thereof shall be less than the number hereby limited. The board of fire commissioners may, by resolution, consent to the incorporation of any of the companies so organized by them,

or may consent to the incorporation of the organization without incorporation of as many companies voluntarily organized in said village as may be deemed necessary.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 202, as amended by L. 1903, Ch. 202 and L. 1905, Ch. 220; originally revised from L. 1870, Ch. 291, tit. 3, sec. 5, as amended by L. 1886, Ch. 600, L. 1847, Ch. 151, sec. 1, L. 1887, Ch. 244, sec. 1, as amended by L. 1888, Ch. 342 and sec. 2.

Cross references. Incorporation and powers of company, see Membership Corporation Law, secs. 100, 101; taking by devise, see Decedent Estate Law, sec. 20; power to take and hold property, see General Corporation Law, sec. 11.

Revisers' note (1897). The Membership Corporation Law, section 65, requires the consent of the trustees of a village to the incorporation of fire, etc., companies.

There is considerable diversity in the several laws as to the number of members in a company. The commission has followed section 5 of title III of the act of 1870.

§ 203. Incorporation of fire department.

The members of all the fire, hose, protective and hook and ladder companies of a village, organized and maintained in pursuance of law, constitute a corporation by the name of the "fire department of —." The term, fire department of a village, as used in this chapter, refers to such a corporation.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 203; originally revised from L. 1887, Ch. 244, sec. 2.

Revisers' note (1897). L. 1887, chap. 244, sec. 2; R. S., 9th ed., 2696, without change of substance. The provisions of section 2 of the act of 1887, relating to general powers of the corporation, are fully covered by sections 11, 12, of the General Corporation Law.

§ 204. Election of company officers and delegates.

Each of the several companies whose members constitute the fire department of the village shall hold an annual meeting on the first Tuesday in April in each year. At such meeting the members of each company shall elect by ballot from their own number a captain and an assistant captain, who must be approved by the board of fire commissioners, one warden and one delegate to the general convention of the fire department. The terms of office of the captain and assistant captain shall be one year, the wardens two years, and the delegates three years, respectively, and any vacancies occurring in any such offices shall be filled by election in like manner. At the first annual meeting after this act takes effect two wardens and three delegates shall be elected, the wardens to serve for one and two years, respectively, and the delegates for one, two and three years, respectively.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 204; originally revised from L. 1870, Ch. 291, tit. 2, sec. 4, in part, L. 1887, Ch. 244, secs. 3, 6. Amended by L. 1916, Ch. 25, in effect March 9, 1916.

Right to vote. Where a member of a volunteer fire company has not paid his dues and fines for non-attendance his right to vote at meetings for the election of officers may be questioned, if the by-laws so prescribe. Rept. of Atty.-Gen., March 17, 1911.

§ 205. Chief engineer and assistant engineers.

The chief engineer and the first and second assistant engineers of the fire department shall each be a member thereof and an elector of the village. The delegates elected to the general convention of the fire department shall meet at the council room thereof on the Thursday following the first Tuesday in April and nominate a person for each of such offices; but the fire commissioners of any village may adopt a rule requiring all such nominations to be made on that day by a vote of the duly qualified members of the department, in which case the meeting of the delegates in general convention, as provided for in this section, shall be dispensed with. The person acting as secretary of such convention shall forthwith file in the office of the village clerk a certificate of such nominations. The board of fire commissioners at its next meeting shall consider the nominations and appoint such persons as it may approve to the offices to which they are respectively nominated. If a nomination is not approved the board shall appoint a qualified person to such office.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 205, as amended by L. 1898, Ch. 145; originally revised from L. 1887, Ch. 244, secs. 3, 4. The amendment by L. 1898, Ch. 145, added the provision authorizing the commissioners to adopt a rule, etc., as to nominations.

Construction of former law. *People v. Hayes*, 20 App. Div. 36, 46 N. Y. Supp. 546.

§ 206. Council of fire department.

In a village in which separate fire commissioners are not appointed, the chief engineer, the assistant engineers and the wardens of the several companies constitute the council of the fire department. The council shall meet on the third Tuesday in April in each year and choose from its own number a secretary, a treasurer and a collector of the fire department, who shall hold their respective offices for one year unless sooner removed by the council. A vacancy in the office of secretary, treasurer or collector shall be filled by the council at its next meeting for the balance of the unexpired term. Such council shall have all the powers and be subject to all the liabilities and perform all the duties of a separate board of fire commissioners, as prescribed in section two hundred of this chapter, except subdivisions two, three, four and eight and the fixing of compensation under sub-

divisions five and seven of such section, and as to the provisions of such subdivisions such council shall only recommend to the board of trustees of the village. A majority of the members of such council constitute a quorum, and may make and prescribe by-laws for the proper management of the affairs and the disposition of the funds of the fire department, may call meetings of the members, and designate one or more days in each year for public exercise, inspection and review.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 206, as amended by L. 1904, Ch. 645 and L. 1908, Ch. 302; originally revised from L. 1847, Ch. 151, sec. 2, L. 1887, Ch. 244, secs. 6, 8.

Editor's note. The Legislature provided that there should be a council only in villages in which a separate board of fire commissioners does not exist. Otherwise all its powers are possessed by the board of fire commissioners.

Power to appoint a chief engineer of the fire department of Dobbs Ferry which has no board of fire commissioners rests with the board of trustees and not with the council of the fire department under sec. 89 of the Village Law, subd. 19. *People ex rel. Wallace v. Carpenter* (1912), 77 Misc. 244.

§ 207. Meetings of fire department.

The members of the several companies constituting the fire department shall hold a general meeting at the council room, or at such other place as the council may direct, on the first Friday following the first Tuesday in April of each year, at seven o'clock in the afternoon, to hear the annual report of the secretary and treasurer, and to transact any other proper business of the fire department. If a meeting or election of the fire department shall not be held on the day fixed by this article therefor the corporation shall not on that account be dissolved, but the meeting or election may be held on a subsequent day in accordance with its by-laws.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 207; originally revised from L. 1887, Ch. 244, secs. 9, 10.

§ 208. Duties of chief engineer and assistants.

The chief engineer shall be president of the council and of the meetings of the fire department. He shall, under the direction of a separate board of fire commissioners, if any, have exclusive control of the members at all fires, inspection and reviews, the supervision of the engines, hose and other apparatus owned by the village for the prevention or extinguishment of fires, of all property owned by the fire department, and of all officers and employes thereof elected or employed by the council or by a

separate board of fire commissioners, if any. He shall, whenever required by the board of fire commissioners, report to the board the condition of the property of the department and such other information respecting the department as may be required. He shall hold the members, officers and employes of the department strictly to account for neglect of duty, and may, in a village in which separate fire commissioners are not appointed, suspend or discharge them at any time, subject to the approval of two-thirds of the members of the council at the next meeting. He shall, upon application, and if authorized by the council, or a separate board of fire commissioners, if any, issue through the secretary of the fire department a certificate of the time of service of a member of the fire department, and shall give to each officer of the department immediately after his election a certificate thereof countersigned by the secretary. In case of the inability or absence of the chief engineer, the first assistant engineer, and in case of the absence or inability of both the chief engineer and first assistant, the second assistant engineer, shall perform the duties and have all the powers of the chief engineer.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 206; originally revised from L. 1870, Ch. 291, tit. 3, sec. 7, L. 1887, Ch. 244, sec. 5.

Cross references. Duties of chief as to fire escapes, see General Business Law, sec. 205.

§ 209. General exemptions of firemen.

A full term of service in a fire department is five successive years. A person who has served in a fire department of a village, after becoming eighteen years of age, shall be entitled to a certificate of such service, signed by the president, and under the corporate seal, or by the chief engineer and the secretary of the fire department, under the seal of the department, or by a majority of the members of the board of fire commissioners in a village in which separate fire commissioners are appointed. Such certificate shall be presumptive evidence of the facts stated therein.

A member of a fire department who removes from the village shall be allowed, as part of a full term, the time he has served continuously as fireman therein, if, within three months thereafter, he becomes a member of the fire department of another village or city; and, upon completing a full term, shall be entitled to all the privileges and exemptions thereby secured to firemen.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 209; originally revised from L. 1870, Ch. 291, tit. 3, sec. 6, L. 1847, Ch. 151, sec. 3, L. 1887, Ch. 244, secs. 11-12.

Cross references. Exemption from military duty, see Military Law, sec. 1, subd. 4; exemption from jury duty, see Judiciary Law, sec. 546, subd. 13; exemption from village taxation, see ante, sec. 132; payment to executors of firemen, see General Municipal Law, sec. 205; free use of railroads, telegraph and telephone lines, see General Municipal Law, secs. 206, 207.

Revisers' note (1897). The Military Code, section 2 (Laws 1893, Ch. 559), exempts firemen and exempt firemen who have served a full term from military service. Code Civil Procedure section 1030, exempts firemen and exempt firemen who have served five years from jury duty. This section requires the service in another village or city to be resumed within three months. There is no limitation in the present law. Section 132 of this chapter authorizes villages to exempt firemen from taxation for village purposes.

Repealed or superseded in effect by General Municipal Law, sections 200, 205. Rept. Atty.-Gen., March 28, 1911.

§ 210. Annual report of the fire commissioners.

Between the first and fourth day of March in each year, the board of fire commissioners shall file with the village clerk a report containing a statement of the following facts:

1. The amount of money on hand at the beginning of the preceding fiscal year, and the receipts from all sources during such year.
2. An itemized statement of the amount paid out during such year, and the balance on hand.
3. The outstanding indebtedness of the department, either bonded or otherwise, separately stated.
4. A statement of the principal or interest which will become due during the current fiscal year on bonds or certificates of indebtedness.
5. The improvements made during such preceding year, and the general condition of the property of the fire department.
6. Such other facts as the board deems important for the interest of the village, together with such recommendations concerning the department as may be deemed proper.

Added by Legislature.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 210.

This section was new in former Village Law.

ARTICLE IX.

WATER.

- Section 220. Contracts for water supply.
221. Election for water works.
222. Acquisition of existing system.
223. Establishment of water works.
224. Supervision and extensions of system.
224a. Audit of accounts.
225. Acquisition of additional water rights.
226. Water pipes in highways outside of village.
227. Connections with mains.
228. Ordinances.
229. Establishment of water rents.
230. Assessment for fire protection.
231. Reservoirs.
232. Supplying water outside of corporate limits.
233. Outside extension of mains.
234. Contracts with other municipalities.
235. Annual report of water commissioners.

§ 220. Contracts for water supply.

The board of water commissioners may contract in the name of the village, with an individual or corporation for supplying water to the village for extinguishing fires or for other public purposes; but such contract shall not be made for a longer period than five years, nor at an expense for each fiscal year exceeding two and a half mills on every dollar of the taxable property of the village as appears on the last preceding village assessment-roll, unless authorized at a village election. The amount of such contract shall be paid in annual instalments, commencing with the date of the contract.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 220; originally revised from L. 1870, Ch. 291, tit. 4, sec. 7, as added by L. 1879, Ch. 129.

Cross references. Incorporation and powers of water works corporations, see Transportation Corporation Law, secs. 80-85; contracts with municipalities, see Transportation Corporations Law, secs. 81, 85.

Editor's note. Amended by the Legislature changing the maximum contract price from fifty cents per capita to two and one-half mills on every taxable dollar.

There is no legal obligation upon a village to furnish water. *Wainwright v. Queens, etc., Co.*, 78 Hun, 146 (1894), 28 N. Y. Supp. 987.

Power of water commissioners limited and they cannot bind the village by any contract beyond the powers conferred by statute. *Village of Fort Edward v. Fish*, 86 Hun, 548 (1895), 33 N. Y. Supp. 784.

Water commissioners are agents of the village and it does not matter whether the contract is made in the name of the board or the village. *Fleming v. Village of Suspension Bridge*, 92 N. Y. 368 (1883); *King v. Village of Randolph*, 28 App. Div. 25 (1898).

Presentation of claim to treasurer of water works board sufficient to entitle plaintiff to costs where contract was made with such board who were also trustees of the village, and the treasurer had sole control of the water works fund. *Hallinan v. Village of Fort Edward*, 26 Misc. 422 (1899).

Common Council has no power, prior to the acquisition of its water supply system, to bind the municipality by a contract placing the system in charge of an engineer for an indefinite period and allowing him a percentage on the amounts expended upon addition to the plant. *Witmer v. City of Jamestown*, 125 App. Div. 43 (1908).

A charter provision requiring the trustees to contract for a term of years in advance will be construed as an exception to the rule forbidding the creation of any debt or liability beyond the amount of taxes applicable to the payment thereof, voted to be raised according to law. *Port Jervis, etc., Co. v. Village of Port Jervis*, 151 N. Y. 111 (1896).

Contract of water supply not extended to entire village where it originally applied only to one of the towns incorporated therein. *In re Beauty Springs Water Co.*, 118 N. Y. Supp. 659 (1909).

Liability under contract for water furnished for fire protection; evidence establishing implied contract. Action by a water company against a village to recover for water used for the purpose of providing fire protection. Evidence examined and held sufficient to establish an implied contract for the payment of the amount claimed, which was conceded to have been the amount paid by the defendant under previous contracts. *Marlborough Water Works Co. v. Village of Marlborough* (1914), 163 App. Div. 159, 148 N. Y. Supp. 374.

§ 221. Election for water works.

A proposition may be submitted at a village election for the establishment of a system of water works for supplying the village and its inhabitants with water, or for the acquisition of an existing private system, at an expense in either case not exceeding the sum stated in the proposition.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 221; originally revised from L. 1875, Ch. 181, sec. 21, in part.

This article is a substitute for L. 1875, Ch. 181 as a whole. Specific reference to the source of each section is impractical. The act of 1875, Ch. 181, prior to its repeal was amended as follows: sec. 2 by L. 1891, Ch. 74; sec. 3 by L. 1894, Ch. 318; sec. 4 by L. 1895, Ch. 383; sec. 5 by L. 1885, Ch. 211; sec. 6 by L. 1885, Ch. 211; sec. 7 by L. 1885, Ch. 211; sec. 8 by L. 1881, Ch. 175; sec. 9 by L. 1892, Ch. 195; sec. 10 by L. 1889, Ch. 455; sec. 12 by L. 1895, Ch. 383; sec. 15 by L. 1896, Ch. 310; sec. 16 by L. 1890, Ch. 527; sec. 17 by L. 1889, Ch. 455; sec. 18 by L. 1890, Ch. 527.

Revisers' note (1897). The act of 1875 has been rewritten and its substantial provisions incorporated in this article. There are many changes in detail in furtherance of simplicity and uniformity.

Requirement that voter be a taxpayer is not unconstitutional. *Spitzer v. Village of Fulton*, 172 N. Y. 285 (1902), aff'd 61 App. Div. 612.

Submission of proposition should not be in the alternative. Either the establishment or the acquisition of an existing system should be proposed. *Village of Hempstead v. Seymour*, 34 Misc. 92 (1901), 69 N. Y. Supp. 462.

The word "raised" used in a proposition submitted to the electors, for the purchase of a water system, is sufficient to have been understood by the voters as contemplating the raising of money by the issuing of bonds or other obligations. *New York, etc., Co. v. Keator*, 62 App. Div. 577 (1901), 71 N. Y. Supp. 185, *aff'd* 173 N. Y. 235.

It was the intention of the legislature to place in the hands of the voters of every village the determination of the question whether or not the village should own its water supply. *Village of Waverly v. Waverly Water Works Co.* (1910), 69 Misc. 373.

§ 222. Acquisition of existing system.

If a proposition be adopted for the acquisition of an existing system of water works, the board of water commissioners may purchase the same at a price not exceeding the sum specified therein. If the board can not agree with the owners of the system for its purchase, proceedings may be taken to acquire the same by condemnation. If the value thereof fixed by the commissioners appointed in the condemnation proceedings be greater than the sum specified in the proposition, such proceedings must be discontinued, unless the payment of the additional amount be authorized at a village election. If the proceedings be so discontinued the costs and disbursements of the defendants therein are a charge against the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 222.

Property of existing plant need not be acquired. *Skaneateles, etc., Co. v. Village of Skaneateles*, 161 N. Y. 154 (1899), *aff'g* 33 App. Div. 642, *aff'd* 184 U. S. 354 (1902); see *Colby Univ. v. Canandaigua*, 69 Fed. 671 (1895), *aff'd* 96 Fed. 449.

Refusal to enter into negotiations on the part of the water company will authorize proceedings by condemnation. *Village of Waverly v. Waverly, etc., Co.*, 127 App. Div. 440 (1908), 111 N. Y. Supp. 541, *aff'd* 194 N. Y. 31.

Existing water company's franchise not exclusive and the municipality has the power to determine whether the right reserved upon the granting of the first franchise shall be exercised by a private corporation or the municipal corporation itself. *Skaneateles, etc., Co. v. Village of Skaneateles*, 161 N. Y. 154 (1899), *aff'g* 33 App. Div. 642.

§ 223. Establishment of water works.

If a proposition to establish a system of water works be adopted, the board of water commissioners shall proceed to construct such system accordingly. It shall prepare a map and plans showing the sources of water supply and a description of the lands, streams, water or water rights to be acquired therefor, and the mode of constructing the proposed water works and the location thereof, including reservoirs, mains, distributing pipes and hydrants. The water commissioners, their agents, servants and employees, may enter upon any lands for the purpose of preparing such

map and plans. The map and plans shall be filed with the village clerk, and a certified copy of such map shall also be filed in the county clerk's office of each county in which any of the lands are situated. The board of water commissioners may acquire, in the name of the village, by purchase, if it can agree with the owners, or otherwise by condemnation, any land, streams, water or water rights necessary for such system. The board may amend the map and plans at any time and such amended map shall be filed in the office of the village clerk, and of the county clerk, in like manner as the original. The board may construct such water system by contract or otherwise, and may appoint and at pleasure remove a superintendent to take charge of the system, and may fix his compensation.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 223.

Cross references. Condemnation proceedings, see Code Civ. Pro., secs. 3357-3384.

Board of water commissioners sole arbiters as to the source from which the water shall be procured and they are not required to present such question to the taxpayers. *Lawrence v. Freeland*, 29 N. Y. St. Rep. 284 (1890), 8 N. Y. Supp. 807.

Proceedings in name of village should be taken and not in the name of the board of water commissioners. *Matter of Roe*, 59 Misc. 535 (1908), 111 N. Y. Supp. 755.

Petition should allege the filing of the map and plans. See *Village of Champlain v. McCrea*, 33 App. Div. 259 (1898), 53 N. Y. Supp. 1096, rev'd on another point 165 N. Y. 264.

Allegation in petition that proceedings were instituted as provided in this section should not be treated as an averment that the water company was organized under such law and subject to the provisions of such section with respect to filing a map and plans, when, the petition, read as a whole, discloses that the company was organized under a former statute. *Village of Champlain v. McCrea*, 165 N. Y. 264 (1901), rev'g 33 App. Div. 259.

Entry made before condemnation proceedings is tortious, and the village and its agents are mere trespassers. The only entry which the statute authorizes, before condemnation is "for the purpose of making surveys and to agree with the owner" as to the amount of compensation. *Village of Johnsville v. Smith*, 184 N. Y. 341 (1906), rev'g 90 App. Div. 618.

Village has right to construct its own system of water works and a prior water company has no exclusive franchise. *Skaneateles Water Co. v. Village of Skaneateles*, 161 N. Y. 154; citing, *In re Beauty Springs Water Co.*, 118 N. Y. Supp. 659 (1909).

Where in action by riparian owner to enjoin the diversion of a stream, it appeared that the same had been so diverted for a system of water works more than fifteen years before and that during that time there had been no assertion of right, the complainants are guilty of such laches as will defeat the action. *Penrhyn, etc., Co. v. Granville, etc., Co.*, 181 N. Y. 80 (1905), rev'g 84 App. Div. 92; 82 N. Y. Supp. 547.

Village cannot be enjoined from condemning land purchased by a company for the purpose of thwarting the village in the acquisition of its water system. *Village of Fultonville v. Fonda, etc., Works*, 35 Misc. 426.

§ 224. Supervision and extension of system.

A system of water-works acquired or established under this article shall be under the control and supervision of the board of water commissioners. The board shall keep it in repair and may, from time to time, extend the mains or distributing pipes within the village, if the expense thereof in any year in a village of the fourth class shall not exceed five hundred dollars, in a village of the third class one

thousand dollars, in a village of the second class fifteen hundred dollars, and in a village of the first class two thousand dollars. If the estimated expense will exceed the above amount, such extension can only be made when authorized by a proposition adopted at an election. A board may, in lieu of extending the mains or distributing pipes, use the amount above specified, or a part thereof, in improving, bettering or perfecting the existing system, such as mains, reservoir, pumping station, filter and lands; but where a village of the second class supplies two or more other villages with water, through a system of distributing pipes, in such villages, owned and controlled by it, the board of water commissioners of such village, may expend for extensions of distributing pipes of its system in any year the sum of fifteen hundred dollars in addition to the foregoing amount.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 224 as amended by L. 1903, Ch. 131. Amended by L. 1913, Ch. 557. In effect May 16, 1913.

Word "may" in the provision that the board of water commissioners may extend the mains within the village, etc., has been construed to mean "must." *People v. Pierce*, 64 Misc. 627 (1907), 119 N. Y. Supp. 21.

By operating water system the village assumes a duty of a governmental character, imposed upon it as one of the political subdivisions of the state and it is not liable for injuries by fire alleged to have been sustained by the negligent use of the powers so acquired. *Springfield, etc., Co. v. Village of Keyesville*, 148 N. Y. 46 (1895).

§ 224-a. Audit of accounts.

The board of fire, water, light, sewer, park or cemetery commissioners, or board possessing the powers of two or more such boards or other board possessing like powers, whether incorporated pursuant to this act or by special statute, shall, when authorized by ordinance of the board of trustees of the village, as provided in subdivision twenty-one of section eighty-nine of the village law, have the power and authority to audit and direct the payment of all accounts, claims and demands incurred by it and payable out of the funds within its jurisdiction.

Added by L. 1917, Ch. 150, in effect April 6, 1917.

§ 225. Acquisition of additional water rights.

A proposition may be submitted at a village election to authorize the board of water commissioners to acquire additional water or water rights, or to construct additional reservoirs, at an expense not exceeding the sum therein stated. If adopted, such improvements shall be made accordingly. For that purpose, the board has the same power and is subject to the same duties and liabilities as in the construction of the original system of water works.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 225.

Entry before acquisition by condemnation. *St. Johnsville v. Smith*, 184 N. Y. 341.

Merely making and filing of map does not authorize the village to take possession of the premises described and erect a water plant thereon. It is only after condemnation proceeding had and confirmed and compensation awarded that the property can be so taken. *Village of St. Johnsville v. Smith*, 184 N. Y. 341 (1906), rev'g 90 App. Div. 618.

Improvements made while a trespasser should be considered in ascertaining the compensation to be paid. *Village of St. Johnsville v. Smith*, 184 N. Y. 341 (1906), rev'g 90 App. Div. 618.

§ 226. Water pipes in highways outside of village.

The board of water commissioners of a village may cause water pipes to be laid, relaid or repaired under any public highway in a county in which any part of such village is situated, or in an adjoining county, for the purpose of introducing water into and through the village; and shall cause the surface of such highway to be restored to its usual condition; and said board of water commissioners may also acquire, take over, and accept from any individual or corporation, gratuitously, or at a nominal consideration any water pipes which have been heretofore laid under any of such public highways in a county in which any part of such village is situated, or in an adjoining county, for the purpose of continuing the supply of water or for the purpose of introducing water into and through such territory, outside of such village, where such water pipes are situated, and supplying the inhabitants thereof with water.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 226; originally revised from L. 1875, Ch. 181, sec. 12, in part, as amended by L. 1895, Ch. 383. Amended by L. 1917, Ch. 362, in effect May 4, 1917.

§ 227. Connections with mains.

Supply pipes connecting with mains and used by private owners or occupants shall be laid and kept in repair at their expense. Such pipes can only be connected with the mains by the permission and under the direction of the board of water commissioners. A member of the board or its authorized agent may at any time enter a building or upon premises where water is used from supply pipes, and make necessary examinations.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 227; originally revised from L. 1875, Ch. 181, secs. 13, 14.

§ 228. Ordinances.

The board of water commissioners may adopt ordinances, not inconsistent with law, for enforcing the collection of water rents and relating to the use of the water, and may enforce observance thereof, by cutting off the supply of water, or by the imposition of penalties.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 228; originally revised from L. 1875, Ch. 181, sec. 19.

Cross references. Ordinances approved by trustees, see ante, sec. 94; violation of ordinances, see ante, sec. 93; when ordinances take effect, see ante, sec. 95.

Power of water commissioners to fix water rates is practically the same as under earlier statutes. *Village of Liberty v. Newkirk* (1912), 77 Misc. 214.

Clerk of board of water commissioners of a village is not known to the law and if one is employed, he acts simply as agent of the board. *Village of Liberty v. Newkirk* (1912), 77 Misc. 214.

§ 229. Establishment of water rents.

The board of water commissioners shall establish a scale of rents for the use of water, to be called "water rents," and to be paid at such times as the board may prescribe. Such rents shall be a lien on the real property upon which the water is used, and such lien is prior and superior to every other lien or claim, except the lien of an existing tax, and the board of water commissioners may bring and maintain an action in the name of the village for the foreclosure of such liens for such water rents.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 229; originally revised from L. 1875, Ch. 181, sec. 13, in part. Amended by L. 1913, Ch. 183. In effect Apr. 3, 1913.

Last sentence new in former Village Law.

Collector of rents may be appointed by the board. Rept. of Atty.-Gen. (1902), 210.

Water rents may be levied on property although no water is actually taken; but the owner is entitled to be heard, and a levy without notice is a taking without due process of law. *Dasey v. Skinner*, 33 N. Y. St. Rep. 15 (1890), 11 N. Y. Supp. 821.

Erroneous tax against the wrong property will not invalidate the entire assessment, but it is a proper subject for correction by the Common Council. *Hooker v. City of Rochester*, 30 N. Y. Supp. 297 (1893).

Enforcement of a statutory lien for unpaid water rents may be had by foreclosure action. Rept. of Atty.-Gen., May 9, 1911.

§ 230. Assessment for fire protection.

A building and the lot upon which it stands, in or on which water from the water works is not used, or which does not take water from the water works corporation, situated within five hundred feet of a hydrant, may be assessed by the board of water commissioners for fire protection. Notice of the proposed assessment, and that the board will meet at a time and place specified therein to hear objection thereto, must be served upon the owner or occupant of the building at least ten days before such meeting. The board shall meet at the time and place specified in the notice, and after hearing objections, shall complete such assessment. Upon the completion of the assessment, the board shall make a certificate thereof and deliver the same to the village treasurer. The treasurer may receive such assessments for thirty days without fee; after that time an action may be brought to recover the assessment, or a special warrant may be issued therefor, or the amount may be included in the next annual tax levy.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 230, as amended by L. 1902, Ch. 591; originally revised from L. 1889, Ch. 507, as amended by L. 1894, Ch. 284.

Editor's note. The Legislature changed the distance within which property should be assessable from 200 feet of a hydrant to 500 feet. See note, preceding section.

Personal property cannot be assessed for fire protection. Rept. of Atty.-Gen. (1904), 213.

A statute authorising commissioners to lay and assess water rates upon property not using water from the municipal system is invalid. *Warsaw, etc., Co. v. Village of Warsaw*, 161 N. Y. 176 (1899), mod'g 16 App. Div. 502; *Skaneateles, etc., Co. v. Village of Skaneateles*, 161 N. Y. 154 (1899), aff'g 33 App. Div. 642.

§ 231. Reservoirs.

In the construction of a storage reservoir connected with the sytem of water works, all vegetable or other matter subject to decay shall be removed from the banks thereof between its highest and lowest possible flow line, or such space be covered by gravel or stone to prevent such decay.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 231; originally revised from L. 1875, Ch. 181, sec. 23.

§ 232. Supplying water outside of corporate limits.

The board of water commissioners may sell to a corporation or individual outside the village the right to make connections with the mains for the purpose of drawing water therefrom, and fix the prices and conditions therefor.

If the mains are or shall be laid in or through another municipal corporation not having a public system of water works, the board of water commissioners may itself lay additional pipes for the purpose of distributing water from such mains, and shall have the same rights in the streets or highways of such other municipal corporation as if the principal system were established therein. The board shall not sell nor permit the use of water under this section if thereby the supply for the village or its inhabitants will be insufficient.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 232; originally revised from L. 1875, Ch. 181, sec. 12, in part, as amended by L. 1895, Ch. 383.

§ 233. Outside extension of mains.

A proposition to extend water mains outside the village may be submitted at an election. Such proposition shall contain a general description of the proposed extension and the estimated expense thereof. If the proposition be adopted, the board of water commissioners shall make the extension accordingly. For that purpose the board shall have the same powers and be sub-

ject to the same duties and liabilities as in the construction of the original system of water works.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 233; originally revised from L. 1886, Ch. 497, as amended by L. 1896, Ch. 329.

§ 234. Contracts with other municipalities.

If the mains are or shall be laid into or through a town, a water supply district thereof, another village or a fire district in an unincorporated village, the board of water commissioners may contract with the town board on behalf of the town or water supply district, or with the board of trustees of a village or the fire commissioners of a fire district, respectively, to furnish water for the extinguishment of fires or for sanitary or other public purposes. Such contract shall not be for a longer period than ten years, nor shall the amount agreed to be paid in any one year exceed two and a half mills for every dollar of the taxable property in such town, village, or fire or water supply district. The amount payable each year by such contract shall be raised as a part of the expense of such town, village or fire district, and paid to the treasurer of the village owning such system of water works.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 234, as amended by L. 1899, Ch. 82.

§ 235. Annual report of water commissioners.

Between the first and fourth day of March in each year the board of water commissioners shall file with the village clerk a report containing a statement of the following facts:

1. The amount of money on hand at the beginning of the preceding fiscal year, and the receipts from all sources during such year.
2. An itemized statement of the amount paid out during such year, and the balance on hand.
3. The outstanding indebtedness of the department, either bonded or otherwise, separately stated.
4. The estimated deficiency in the amount necessary to pay principal or interest or the expenses of the department during the next fiscal year, after applying thereto to the probable amount of water rents or other income to be received, and any amount available from the sinking fund.

5. The improvements and extensions made during such preceding year and the general condition of the water works.

6. Such other facts as the board deems important for the information of the village, together with such recommendations concerning the department as may be deemed proper.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 235; originally a substitute for L. 1875, Ch. 181, sec. 17, as amended by L. 1889, Ch. 455, requiring report to board of supervisors.

Cross references. Contracts for purification of water, see General Municipal Law, sec. 120.

Board of water commissioners is not a corporation, the commissioners are merely the agents of the village. *King v. Village of Randolph*, 28 App. Div. 25 (1898), 50 N. Y. Supp. 902; *Fleming v. Village of Suspension Bridge*, 92 N. Y. 368 (1883).

Water commissioners cannot sell bonds at less than their par value, and any contract so made by them is ultra vires and void. *Village of Fort Edward v. Fish*, 86 Hun, 548 (1895), 33 N. Y. Supp. 784, *aff'd* 156 N. Y. 363.

ARTICLE X.

LIGHT.

- Section 240. Contracts for lighting.
241. Election for lighting system.
242. Acquisition of existing system.
243. Establishment of lighting system.
244. Supervision and extension of system.
245. Ordinances.
246. Establishment of light rents.
247. Annual report of light commissioners.

§ 240. Contracts for lighting.

The board of light commissioners may contract, in the name of the village, with an individual or corporation, for lighting the streets, public grounds and public buildings of the village by gas, electricity or other substance; but such contract shall not be made for a longer period than five years, nor at an expense for each fiscal year exceeding two and a half mills on every dollar of taxable property of the village as appears on the last preceding village assessment-roll, unless authorized at a village election. The amount of such contract shall be paid in annual instalments, commencing with the date of the contract.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 240; originally revised from L. 1888, Ch. 452, as amended by L. 1896, Ch. 166; L. 1894, Ch. 673, as amended by L. 1896, Ch. 663; L. 1870, Ch. 291, tit. 4, sec. 8, as added by L. 1891, Ch. 139.

Cross references. Powers of corporation having contract, see Transportation Corporations Law, sec. 61; organization and powers of gas and electric light corporations, see Transportation Corporations Law, secs. 60-66.

Revisers' note (1897). This section is a substantial re-enactment of the act of 1888, except that the limitation of amount is raised from one and a half to two and a half mills per annum, to conform to the special act relating to Westchester and Rockland counties. (Laws 1894, chap. 673, as amended by Laws 1896, chap. 663.) The provision that in villages of less than 3,000 population the amount shall not be more than \$2,000 is omitted and all villages places on the same basis. This has already been done as to villages in Westchester, Richmond and Rockland counties. The act of 1888 provides that the act shall not apply to villages of over 8,000 population by the census of 1890. This exception is omitted. The provision of the act of 1870 (sec. 8 of tit. IV) is superseded by the act of 1888, as amended by Laws 1893, chap. 473. In that section there is no limitation upon the amount. The section also provides absolutely that the contract be for not more than five years.

See Curtis on the Law of Electricity.

Trustees may grant franchise to an individual or a corporation. *Wakefield v. Village of Theresa*, 125 App. Div. 38 (1908), 109 N. Y. Supp. 414.

Franchise cannot be impeached where it was originally made for five years with privilege of renewal, but the owner was allowed to continue from year to year without formal renewal. *Wakefield v. Village of Theresa*, 125 App. Div. 38 (1908), 109 N. Y. Supp. 414.

§ 241. Election for lighting system.

A proposition may be submitted at a village election for the establishment of a system for supplying the village and its inhabitants with light by any approved method, or for the acquisition of an existing private system, at an expense in either case not exceeding the sum stated in the proposition.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 241; originally revised from L. 1894, Ch. 680, secs. 3-5.

Proposition does not violate Election Law in stating more than one proposition, because the ballot as printed authorizes lighting by water power, purchased current or any approved combination of these methods. *Everett v. Village of Potsdam*, 112 App. Div. 727 (1906), 98 N. Y. Supp. 963.

Propositions cannot be united so as to propose the acquisition of an existing private system and the construction of an original plant. *Village of Hempstead v. Seymour*, 34 Misc. 92 (1901), 69 N. Y. Supp. 462.

§ 242. Acquisition of existing private system.

If a proposition be adopted for the acquisition of an existing private lighting system, the board of light commissioners may purchase the same at a price not exceeding the sum specified therein. If the board can not agree with the owners of the system for its purchase, proceedings may be taken to acquire the same by condemnation. If the value thereof fixed by the commissioners appointed in the condemnation proceedings be greater than the sum specified in the proposition, such proceedings must be discontinued, unless the payment of the additional amount be authorized at a village election. If the proceedings be so discontinued, the costs and disbursements of the defendants therein are a charge against the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 242; originally revised from L. 1894, Ch. 680, sec. 6.

Cross references. Condemnation proceedings, see Code Civ. Pro., secs. 3357-3384.

§ 243. Establishment of lighting system.

If a proposition to establish a lighting system be adopted, the board of light commissioners shall proceed to construct such system accordingly. It shall prepare a map and plans of such system indicating the streets and localities in the village to be supplied with light thereby, and shall file the same in the office of the village clerk. The board of light commissioners may acquire in the name of the village, by purchase, if it can agree with the owners, or otherwise by condemnation, any land necessary for such system. The board may amend the map and plans at any time and such amended map shall be filed in the office of the village clerk in like manner as the original. The board may construct such lighting system by contract or otherwise.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 243; originally revised from L. 1894, Ch. 380, secs. 3-5.

No power to establish plant for supplying the village and its inhabitants without a certificate from the state commission of gas and electricity. *Potsdam, etc., Co. v. Village of Potsdam*, 49 Misc. 18, 97 N. Y. Supp. 190, aff'd 113 App. Div. 894.

§ 244. Supervision and extension of system.

The lighting system acquired or established under this article shall be under the control and supervision of the board of light commissioners. The board shall keep it in repair and may, from time to time, if it has sufficient funds, extend such system, if the expense thereof in any year will not exceed one thousand dollars. If the estimated expense will exceed one thousand dollars, such extension can only be made when authorized by a proposition adopted at an election, in which event, it shall be so made. Such system may be so extended outside the village in, upon and along the highways within a town in which the village is wholly or partly situated, or within a town adjoining that in which the village is situated if the village be wholly within one town and in a county of less than one hundred thousand population, provided, however, that if at the time of such extension there shall be a private electric light cor-

poration operating within such village or within the territory into which such system shall be extended, such extension shall not be made without the permission and approval of the proper public service commission. If such system shall be so extended outside of a village into or through a town or adjoining towns or a lighting district thereof, the board of light commissioners of the village may contract with the town board of such town for lighting the streets, highways, public grounds and public buildings of such town or lighting district, in pursuance of the provisions of article twelve of the town law, which shall be applicable to such contract and to the levying of a tax for the payment of the amounts which shall be payable thereunder to the treasurer of the village. Wherever such system shall be so extended outside a village, occupants of premises adjacent to such extended system outside the village shall be entitled to be supplied with light therefrom under the same conditions and at the same rates as occupants of premises in the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 244.

Amended by L. 1912, Ch. 364 and L. 1916, Ch. 20, in effect March 6, 1916.

§ 245. Ordinances.

The board of light commissioners may adopt ordinances, not inconsistent with law, for enforcing the collection of light rents and relating to the use of light, and may enforce observance thereto, by cutting off the supply of light or by the imposition of penalties.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 245; originally revised from L. 1894, Ch. 680, sec. 3, in part.

Cross references. Violation of ordinances, see ante, sec. 93; approval by board of trustees, etc., see ante, sec. 94; when ordinances take effect, see ante, sec. 95.

§ 246. Establishment of light rents.

The board of light commissioners shall establish a scale of rents for the use of light, to be called "light rents," and to be paid at such times as the board may prescribe.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 246; originally revised from L. 1894, Ch. 680, sec. 3, in part.

Cross references. Establishment of water rents, see ante, sec. 229.

Collector may be appointed by the commissioner. Rept. of Atty.-Gen (1902), 210.

§ 247. Annual report of light commissioners.

Between the first and fourth day of March in each year, the board of light commissioners shall file with the village clerk a report containing a statement of the following facts:

1. The amount of money on hand at the beginning of the preceding fiscal year, and the receipts from all sources during such year.

2. An itemized statement of the amount paid out during such year, and the balance on hand.

3. The outstanding indebtedness of the department, either bonded or otherwise, separately stated.

4. The estimated deficiency in the amount necessary to pay the principal or interest or the expenses of the department during the next fiscal year, after applying thereto the probable amount of light rents to be received, and any amount available from the sinking fund.

5. The improvements and extensions made during such preceding year, and the general condition of the lighting system.

6. Such other facts as the board deems important for the information of the village, together with such recommendations concerning the department as may be deemed proper.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 247.

This section was new in former Village Law.

ARTICLE XI.

SEWERS.

- Section 260. Establishment of sewer system.
- 261. Construction of sewer at expense of village.
 - 262. Reimbursement for sewers constructed at private expense.
 - 263. Construction of sewer at joint expense of village and of property benefited.
 - 264. Constructed of sewers wholly at expense of property benefited.
 - 265. Acquisition of property by condemnation.
 - 266. Contracts for construction of system.
 - 267. Supervising engineer; inspectors.
 - 268. Apportionment of local assessment.
 - 269. Appeal from apportionment.
 - 270. Hearing of appeal.
 - 271. Reapportionment.
 - 272. Procedure by new commissioners.
 - 273. Fees of commissioners.
 - 274. Expense of construction; how raised.
 - 275. Tax for unpaid assessments.
 - 276. Contracts with other municipalities, sewer districts, etc.
 - 277. Annual report of sewer commissioners.
 - 278. Sewer connections.

§ 260. Establishment of sewer system.

The board of sewer commissioners of a village may establish, extend and maintain a sewer system therein. Before taking any proceedings for the construction of any sewer, the board, at the expense of the village, shall, unless such map and plan have already been officially approved by the state commissioner of health and copies filed in the state department of health and in the office of the village clerk, cause a map and plan of a permanent sewer system for such village to be made, with specifications of dimensions, connections and outlets or sewage disposal works. It may also include any existing sewer in the village, which on examination by the village engineer shall be found feasible and proper to incorporate or include in the proposed system. Such map and plan shall be comprehensive and shall cover all portions of the village, but the village may construct the whole of the said system or may temporarily omit any portions thereof until such portions may be necessary, subject to the approval of such omis-

See Joyce on Nuisance; Parker & Worthington on Public Health and Safety.

sion by the state commissioner of health as hereinafter provided. Such map and plan shall be submitted to the state commissioner of health for his approval, and if approved shall be filed in his office. A copy thereof shall also be filed in the office of the village clerk. The map and plan may be amended, with the approval of the state commissioner of health, and when so amended and approved shall be filed in the same offices as the original. No work of any kind shall be done on or for the construction, extension, reconstruction, removal or modification of any system of sewers or of any sewer thereof until a map and plan covering the entire system shall first have been duly approved and filed as above provided, and in the execution of the construction, extension, reconstruction, removal or modification of any system of sewers or of any sewer thereof no deviations from the plans as finally approved and filed shall be made until plans or descriptions adequately showing such deviations are first approved and filed as above provided. Whenever the board of sewer commissioners of the village shall deem it desirable to the interests of the village that a portion of the permanent general system of sewers and sewage disposal thereof may be temporarily omitted or deferred, it shall certify that fact in writing to the state commissioner of health, designating by a map or otherwise the portions of the system to be omitted, or the portion not to be omitted, and on receipt of the same the state commissioner of health may approve of such temporary omission and shall certify his determination to the board of sewer commissioners of the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 260, as amended by L. 1906, Ch. 278; originally revised from L. 1889, Ch. 375, in part.

This section is a substitute for L. 1889, Ch. 375. Specific reference to the source of each section is for the most part impractical. L. 1889, Ch. 375, before its repeal was amended as follows: sec. 2 by L. 1891, Ch. 306; sec. 3 by L. 1895, Ch. 202; sec. 4 by L. 1893, Ch. 422; sec. 7 by L. 1896, Ch. 409; sec. 8 by L. 1891, Ch. 316; sec. 10 by L. 1896, Ch. 409; sec. 14 by L. 1891, Ch. 316; sec. 15 added by L. 1892, Ch. 564.

Cross references. Purification of sewage, see General Municipal Law, sec. 120; protection of waters from discharge of sewage, see Public Health Law, sec. 87; colleges may connect sewer system with village system, see Education Law, sec. 1106; municipal liability for a nuisance, see Joyce on Nuisances, sec. 353.

Revisers' note (1897). This article is a substitute for the Sewer Act of 1889. There are many changes in detail in furtherance of simplicity and uniformity, but the general scheme has not been substantially changed.

This section not so strictly construed as to require the map and plan to embrace every lateral sewer which may be needful for future development. *Mead v. Turner*, 119 N. Y. Supp. 526 (1909).

Statute authorizing a city and a village to enter into an agreement to provide a sewerage system for the village, is not unconstitutional. *Mead v. Turner*, 119 N. Y. Supp. 526 (1909).

SEWERS AND DRAINS

In general. In the construction and maintenance of a sewer or drainage system a municipality exercises a part of the governmental powers of the state for the local convenience and benefits of the people. *Hughes v. City of Auburn*, 161 N. Y. 96 (1899).

There is no presumption of lawful authority arising from the commission of the act, merely because done or directed by a municipality having general powers in this regard. *Bradt v. City of Albany*, 5 Hun, 591 (1875); *Butler v. Village of White Plains*, 59 App. Div. 30 (1901), 69 N. Y. Supp. 193.

Authority to construct, conferred by charter does not give a right to commit a nuisance. *Sammons v. City of Gloversville*, 175 N. Y. 346 (1903), aff'g 67 App. Div. 628.

Injunction may be granted notwithstanding the fact that the trespasser is a municipality. *Stoddard v. Village of Saratoga Springs*, 127 N. Y. 261 (1891); *Schrivver v. Village of Johnstown*, 71 Hun, 232 (1893); *Sammons v. City of Gloversville*, 175 N. Y. 346 (1903), aff'g 67 App. Div. 628; *Gerow v. Village of Liberty*, 106 App. Div. 357 (1905), 94 N. Y. Supp. 949.

Duty to construct. Unless so required by statute, a municipality is not legally compelled to construct sewers and drains. *Hughes v. City of Auburn*, 161 N. Y. 96 (1899); *Anchor, etc., Co. v. Village of Dobbs Ferry*, 84 Hun, 274 (1895); *Seifert v. City of Brooklyn*, 101 N. Y. 136 (1886); *Mills v. City of Brooklyn*, 32 N. Y. 489 (1865); *Munn v. City of Hudson*, 61 App. Div. 343 (1901); *McCarthy v. City of Syracuse*, 46 N. Y. 194 (1871).

But this rule does not apply where the necessity for the drainage is caused by the act of the corporation itself. *Byrnes v. City of Cohoes*, 67 N. Y. 204 (1876); *Vogel v. Mayor, etc., of New York*, 92 N. Y. 11 (1883).

Plan adopted discretionary. The plan adopted for the construction of sewers is a matter resting within the judicial discretion of the municipal authorities. *McCarthy v. City of Syracuse*, 46 N. Y. 194 (1871); *Garratt v. Trustees of Canandaigua*, 135 N. Y. 436 (1892); *Hughes v. City of Auburn*, 161 N. Y. 96 (1899); *Mills v. City of Brooklyn*, 32 N. Y. 489 (1865); *Seifert v. City of Brooklyn*, 101 N. Y. 136 (1886); *Ahrens v. City of Rochester*, 97 App. Div. 490 (1904); *Munn v. City of Hudson*, 61 App. Div. 343 (1901); see *Watson v. Village of Kingston*, 114 N. Y. 88 (1889).

The exercise of this discretion must, however, be reasonable, and the municipality will be liable for injuries which might have been avoided by change of plan or more prudent methods. *Seifert v. City of Brooklyn*, 101 N. Y. 136 (1886); *Ahrens v. City of Rochester*, 97 App. Div. 490 (1904); *Rochester, etc., Co. v. City of Rochester*, 3 N. Y. 463 (1850); *Munn v. City of Hudson*, 61 App. Div. 343 (1901); *Stoddard v. Village of Saratoga Springs*, 127 N. Y. 261 (1891).

Duty of repair. Having once constructed sewers and drains it is the duty of the municipality to keep them free from defects and in good repair. *Rochester, etc., Co. v. City of Rochester*, 3 N. Y. 463 (1850); *Barton v. City of Syracuse*, 36 N. Y. 54 (1867); *Seifert v. City of Brooklyn*, 101 N. Y. 136 (1886); *Munn v. City of Hudson*, 61 App. Div. 343 (1901); *Falcott v. City of New York*, 58 App. Div. 514 (1901); *Schumacher v. City of New York*, 40 App. Div. 320 (1899); *McCarthy v. City of Syracuse*, 46 N. Y. 194 (1871).

The municipality is not an insurer of the condition of its sewers and drains. *Weidman v. City of New York*, 84 App. Div. 321 (1903); *Falcott v. City of New York*, 58 App. Div. 514 (1901).

It is only required to exercise reasonable diligence in their care and use. *Smith v. Mayor, etc., of New York*, 66 N. Y. 295 (1876); *Falcott v. City of New York*, 58 App. Div. 514 (1901); *Weidman v. City of New York*, 84 App. Div. 321 (1903); *Barton v. City of Syracuse*, 36 N. Y. 54 (1867).

Municipality not liable for overflow caused by unusual flood or heavy rains. *Smith v. Mayor, etc., of New York*, 66 N. Y. 295 (1876).

Negligence. In order to warrant a recovery a clear case of negligence must be shown. *Weidman v. City of New York*, 84 App. Div. 321 (1903); *Smith v. Mayor, etc., of New York*, 66 N. Y. 295 (1876).

And the question of negligence in maintenance is for the jury. *Burnett v. Mayor, etc., of New York*, 36 App. Div. 458 (1899).

Liability for trespass or nuisance. Where sewage or overflow of water is conducted into the house or upon the premises of an individual, owing to some defect in construction or failure to properly repair, the municipality is responsible in damage for the trespass or nuisance. *Schumacher v. City of New York*, 40 App. Div. 320 (1899); *Anchor, etc., Co. v. Village of Dobbs Ferry*, 84 Hun, 274 (1895); *Noonan v. City of Albany*, 79 N. Y. 470 (1880); *Byrnes v. City of Cohoes*, 67 N. Y. 204 (1876); *Hughes v. City of Auburn*, 161 N. Y. 96 (1899); *Vogel v. Mayor, etc., of New York*, 92 N. Y. 11 (1883); *Seifert v. City of Brooklyn*, 101 N. Y. 136 (1886); *Ahrens v. City of Rochester*, 97 App. Div. 480 (1904); *Munn v. City of Hudson*, 61 App. Div. 343 (1901); *Rochester, etc., Co. v. City of Rochester*, 3 N. Y. 463 (1850); *Bastable v. City of Syracuse*, 72 N. Y. 64 (1878); *Munn v. City of Hudson*, 61 App. Div. 343 (1901); *McCarthy v. City of Syracuse*, 46 N. Y. 194 (1871); *New York, etc., R. Co. v. City of Rochester*, 127 N. Y. 591 (1891); *Stoddard v. Village of Saratoga Springs*, 127 N. Y. 261 (1891); *Evers v. Long Island City*, 78 Hun, 242 (1894); *Gillett v. Trustees of Kinderhook*, 77 Hun, 604 (1894).

Municipality liable for nuisance created by the operation of its sewerage system. *Bolton v. Village of New Rochelle*, 84 Hun (1895), 28 N. Y. Supp. 825; *Sammons v. City of Gloversville*, 175 N. Y. 346 (1903), aff'g 67 App. Div. 628; *Gerow v. Village of Liberty*, 106 App. Div. 357 (1905), 94 N. Y. Supp. 949.

Measure of damages is the depreciation in rental value. *Schrivver v. Village of Johnstown*, 71 Hun, 232 (1893), 24 N. Y. Supp. 1083; *Gerow v. Village of Liberty*, 106 App. Div. 357 (1905), 94 N. Y. Supp. 949.

Notice. No notice is necessary where the injury results from an omission of duty or a neglect to do an act which it is incumbent upon the municipality to perform. *McCarthy v. City of Syracuse*, 46 N. Y. 194 (1871); *Barton v. City of Syracuse*, 36 N. Y. 54 (1867); *Falcott v. City of New York*, 58 App. Div. 514 (1901).

In case of temporary obstruction there must have been some notice on the part of the municipality in order to render it liable. *Smith v. Mayor, etc.*, of New York, 66 N. Y. 295 (1876).

In the absence of any extraordinary event which would cause obstruction a presumption of negligence arises which calls for an explanation on the part of the municipality. *Falcott v. City of New York*, 58 App. Div. 514 (1901); see *Mazie v. City of Brooklyn*, 18 App. Div. 22.

Surface water. A municipality corporation has no greater right than an individual to collect the water from its streets into an artificial channel and discharge it upon the lands of another. *Vogel v. Mayor, etc.*, of New York, 92 N. Y. 11 (1883); *Noonan v. City of Albany*, 79 N. Y. 470 (1880); *Byrnes v. City of Cohoes*, 67 N. Y. 204 (1876); *Hentz v. City of Mount Vernon*, 5 Hun, 602, 78 App. Div. 515 (1903); *Miles v. City of Brooklyn*, 98 App. Div. 195 (1904); *Seifert v. City of Brooklyn*, 101 N. Y. 136 (1886); *Bradt v. City of Albany*, 5 Hun, 591 (1875).

But it is not liable, in the absence of negligence, for a change in the flow of surface water caused by improving and grading the streets. *Miles v. City of Brooklyn*, 98 App. Div. 195 (1904); *Lynch v. Mayor, etc.*, of New York, 76 N. Y. 60 (1879); *Rutherford v. Village of Holley*, 105 N. Y. 632 (1887); *Anchor, etc., Co. v. Village of Dobbs Ferry*, 84 Hun, 274 (1895).

§ 261. Construction of a sewer at expense of village.

Upon the adoption of a proposition therefor the whole or any part of the sewer system may be constructed at the expense of the village. The proposition shall describe the portion of the system proposed to be so constructed, and shall also contain a statement of the estimated maximum and minimum cost thereof.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 261; originally revised from L. 1889, Ch. 375, sec. 4, in part, as amended by L. 1893, Ch. 422.

Proposition must be in statutory form and adopted by a majority vote. A proposition merely embodying a prior resolution authorizing the trustees to borrow a certain sum for sewer construction and raise the money by a tax is insufficient and bonds issued in pursuance thereof are void. *Village of Brockport v. Green*, 39 Misc. 231 (1902), 79 N. Y. Supp. 416.

Plans may not be altered without re-submission to a vote of the electors. *Rept. of Atty.-Gen.* (1904), 328.

§ 262. Reimbursement for sewers constructed at private expense.

If the whole of the sewer system be constructed at the expense of the village and a sewer theretofore constructed wholly or partly at private expense be included in the map or plan of the system, the owners of the property upon which such expense was assessed shall be entitled to reimbursement therefor. Claims for such reimbursement may be presented to and audited by the board of sewer commissioners, and the amounts allowed shall be paid in the same manner as other expenditures for the sewer system.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 262; originally revised from L. 1889, Ch. 375, sec. 15, in part, as amended by L. 1892, Ch. 564.

§ 263. Construction of sewer at joint expense of village and of property benefited.

Upon the adoption of a proposition therefor, the whole or any part of the sewer system may be constructed at the joint expense of the village and of the property benefited. The proposition shall describe the portion of the system proposed to be so constructed, shall contain a statement of the estimated maximum and minimum cost thereof, and also of the proportion of the expense to be assessed upon the village at large, and the aggregate proportion to be assessed upon the property benefited. If the proposition be adopted such aggregate proportion shall be equitably adjusted with reference to the benefits to be derived therefrom.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 263; originally revised from L. 1889, Ch. 375, sec. 4, in part, as amended by L. 1893, Ch. 422.

For purpose of assessment the substitution of a larger sewer at a different depth and place in the street, is a new sewer. *Denise v. Village of Fairport*, 11 Misc. 199 (1895), 32 N. Y. Supp. 97.

§ 264. Construction of sewers wholly at expense of property benefited.

The owners of two-thirds of the entire frontage of the portion of a street or streets in which a sewer is proposed to be constructed may present to the board of sewer commissioners a petition for the construction of such a sewer. The board shall cause a notice of at least ten days to be given to each person owning land fronting on such portion of such street or streets, of a time and place where it will meet and hear persons interested in the construction of such sewer. After such hearing the board may grant the petition in whole or in part, and shall construct a sewer as ordered, and assess the entire expense thereof upon the property benefited. Where such petition is for the construction of a sewer through different streets, such sewer shall be deemed one sewer, and such streets, one continuous street, for the purposes of this section. A petition under this section may limit the maximum amount of the expense to be incurred in the construction of such sewer.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 264; originally revised from L. 1889, Ch. 375, sec. 8, in part, as amended by L. 1891, Ch. 316.

Notice of time and place of hearing; section must be deemed to have been enacted on date when original statute was passed. This section, requiring notice to be given to each property owner of the time and place of hearing, before the extension of a proposed sewer is decided upon, is a re-enactment of section 264 of the former Village Law enacted in 1897, and by virtue of chapter 596 of the Laws of 1909, prescribing the rules for the construction of the Consolidated Laws, it is to be deemed to have been enacted on the date when the original statute was passed, and not on the date when the Consolidated Laws were enacted, and this being prior to the enactment of the charter of the village of Saratoga Springs which governs the extension of a sewer system, the procedure prescribed by the charter should be followed. *Harris v. City of Saratoga Springs* (1916), 171 App. Div. 282, 156 N. Y. Supp. 844.

§ 265. Acquisition of property by condemnation.

If the board of sewer commissioners is unable to agree with the owner for the purchase of real property necessary for the sewer system, it may acquire the same by condemnation.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 265; originally revised from L. 1889, Ch. 375, sec. 9.

Cross references. Condemnation proceedings, see Code Civ. Pro. secs. 3357-3384.

Property acquired for one purpose may be used for an additional purpose, not inconsistent with the first, and a taxpayers action will not lie to enjoin such additional use. *Winkler v. Summers*, 22 App. N. Cas. 80 (1898), 5 N. Y. Supp. 723.

Charter provision authorizing the construction of sewers is a legislative permission, not a direction, and confers no right to appropriate land without compensation. *Sammons v. City of Gloversville*, 175 N. Y. 346 (1903), aff'g 67 App. Div. 628.

§ 266. Contracts for construction of system.

The board of sewer commissioners of a village authorized to construct the whole or any part of a sewer system shall advertise for proposals for the construction thereof, either under an entire contract, or in parts or sections, as the board may determine. Such advertisement shall be published once in each of two successive weeks in each newspaper published in the village. The board may require a bond or a deposit from the person submitting a proposal, the liability of such bond to accrue, or such deposit to be forfeited to the village, in case such person shall refuse to enter into a contract in accordance with his proposal. The board may accept or reject any proposal, may contract with other than the lowest bidder, or may reject all proposals and advertise again. No contract shall be made by which a greater amount shall be agreed to be paid, than the maximum stated in the proposition or in the petition for the construction of such sewer.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 266; originally revised from L. 1889, Ch. 375, sec. 8, in part.

Contract without advertisement is void and assessment paid thereunder may be recovered. *Mutual, etc., Co. v. Mayor, etc., New York*, 144 N. Y. 494 (1895), aff'g 79 Hun, 482; 29 N. Y. Supp. 980.

§ 267. Supervising engineer; inspectors.

The board of sewer commissioners may employ a supervising engineer to superintend and inspect the construction of any sewer

or works connected therewith, and also such inspectors as may be necessary, and fix the compensation of such engineer and inspectors. Such compensation shall be treated as a part of the expense of construction.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 267; originally revised from L. 1889, Ch. 375, sec. 13.

§ 268. Apportionment of local assessment.

If the whole or any part of the expense of constructing a sewer is to be assessed upon the lands benefited, the board of sewer commissioners shall prepare and file in the office of the village clerk, a map and plan of the proposed area of local assessment. Such expense shall thereupon be apportioned upon the lands within such area in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom, and the ratio of such benefit shall be established. After making such apportionment the board shall serve upon each land owner a notice thereof and of the filing of such map and plan, and that at a specified time and place a hearing will be had to consider and review the same. Such notice must be served at least six days before the hearing. The board shall meet at the time and place specified and hear objections to such apportionment. It may modify and correct the same, or exclude land from the area of local assessment. The board of sewer commissioners, upon the completion of such apportionment, shall file the same in the office of the village clerk. The apportionment shall be deemed final and conclusive, unless an appeal be taken therefrom within fifteen days after the filing thereof.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 268; originally revised from L. 1889, Ch. 375, sec. 7, as amended by L. 1896, Ch. 409, sec. 14, as amended by L. 1891, Ch. 316.

In assessing cost of construction the commissioners should consider the effect of the improvement upon the market value of the property, without regard to the present use or the purpose of the owner in relation to future enjoyment. *Matter of Wheeler*, 39 Misc. 484 (1902), 80 N. Y. Supp. 204; see also, *Matter of Klock*, 30 App. Div. 24 (1898), 51 N. Y. Supp. 807.

Front foot rule should not be adopted where it results in assessments which do not comply with the statutory rule. *Matter of Wheeler*, 39 Misc. 484 (1902), 80 N. Y. Supp. 204; *Matter of Klock*, 30 App. Div. 24 (1898), 51 N. Y. Supp. 807.

In determining value of property the commissioners should consider the question whether the property is vacant or improved, and, if improved, the extent and value of such improvements. *Matter of Wheeler*, 39 Misc. 484 (1902), 80 N. Y. Supp. 204; see *People v. Mayor, etc., of Syracuse*, 83 N. Y. 291 (1875).

§ 269. Appeal from apportionment.

A person aggrieved by an apportionment may, within fifteen days after the filing thereof, appeal therefrom to the county court of a county in which any part of the village is situated. Such appeal shall be taken by a notice, stating the grounds thereof, addressed to the board of sewer commissioners, and filed with the village clerk.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 269; originally revised from L. 1889, Ch. 375, sec. 7, in part, as amended by L. 1896, Ch. 409.

§ 270. Hearing of appeal.

Either party may bring on the appeal upon a notice of not less than ten nor more than twenty days. All appeals from the same apportionment must be consolidated and heard as one appeal. The county court may affirm or reverse the apportionment. If it be reversed upon the ground that it is erroneous, unequal or inequitable, the court shall by the order of reversal appoint three disinterested freeholders of the village as commissioners to make a new apportionment, and no appeal shall be allowed from such order.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 270; originally revised from L. 1889, Ch. 375, sec. 7, in part, as amended by L. 1896, Ch. 409.

§ 271. Reapportionment.

A reapportionment shall be made in the following cases:

1. By the commissioners appointed by the county court, where the original apportionment is reversed on the ground that it is erroneous, unequal or inequitable.

2. By the board of sewer commissioners where the original apportionment is reversed upon any other ground. A reapportionment under this subdivision shall be made in like manner as the original.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 271; originally revised from L. 1889, Ch. 375, sec. 7, in part, as amended by L. 1896, Ch. 409.

§ 272. Procedure by new commissioners.

The commissioners appointed by the county court shall give notice of the time and place at which they will meet to make such reapportionment, and shall serve notice thereof at least ten days before such meeting upon each owner of land within the area of local assessment as finally fixed by the board of sewer commissioners. They shall meet at the time and place specified and make such reapportionment in the manner herein prescribed for the board of sewer commissioners. They shall file such reapportionment in the office of the village clerk, and it shall be final and conclusive.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 272; originally revised from L. 1889, Ch. 375, sec. 7, in part, as amended by L. 1896, Ch. 409.

§ 273. Fees of commissioners.

Each commissioner appointed by the county court is entitled to five dollars for each day necessarily spent in making such reapportionment, beside his actual necessary expenses. Such fees and expenses are a charge against the village, and must be audited by the board of trustees. The amount thereof shall be added to the portion of the expense of constructing such sewer or sewer system which is to be assessed against property specially benefited.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 273; originally revised from L. 1889, Ch. 375, sec. 7, in part, as amended by L. 1896, Ch. 409.

§ 274. Expense of construction; how raised.

The expense of constructing a sewer or a sewer system may be raised in an entire amount or in smaller sums from time to time as the board of sewer commissioners may determine. If any portion of such expense is to be borne by the village, bonds or certificates of indebtedness may be issued therefor. If such expense or any part thereof is to be assessed upon property benefited, the board may assess the same, or the instalment to be raised, on the several benefited lots or parcels, in accordance with the apportionment and ratio established under this article. Notice of such assessment shall be given to the owners, who may pay the amounts assessed within ten days after the service of such notice. At the expiration of such time bonds or certificates of indebtedness may be issued for the aggregate amount of such assessment then remaining unpaid.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 274; originally revised from L. 1889, Ch. 375, sec. 10, in part, as amended by L. 1896, Ch. 409.

Where due diligence is not used in collecting assessment the contractor may proceed by mandamus, but in case of abandonment or refusal to perform the contract, he may proceed by action. *Weston v. City of Syracuse*, 158 N. Y. 274 (1899).

§ 275. Tax for unpaid assessments.

The board of trustees shall include in the annual tax levy the principal or interest accruing during the same fiscal year upon bonds or certificates of indebtedness issued on account of default in the payment of local assessments under this article, and shall levy the same upon the lots or parcels in default.

Such principal shall be apportioned among the lots or parcels in default so that the tax thereon will be the same as if an equal portion of the assessment were then to be paid. Interest on an unpaid assessment shall be added to such tax at the rate payable by the bond or certificate of indebtedness, which must be computed to the time when the principal or an instalment will become due; or if no principal will become due during the fiscal year, then the interest accruing during that year upon the assessment must be levied upon such lot or parcel.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 275; originally revised from L. 1889, Ch. 375, sec. 10, in part, as amended by L. 1896, Ch. 409.

§ 276. Contracts with other municipalities, sewer districts, et cetera.

The board of sewer commissioners may contract for the connection of the sewers thereof with the sewers of another village, or of a town, or city, or of a sewer district established under the provisions of article eleven of the town law; or jointly with such other village, or a town, or city, or sewer district established as aforesaid, may construct, maintain, operate or use sewers, outlets or disposal works; or may contract with any such other village, or a town, or city, or sewer district established as aforesaid for the right to construct and maintain through any such other village, town or city, or sewer district established as aforesaid, an outlet sewer, including the right to acquire real property for such sewer outlet, which thereupon may be acquired either at private sale or by condemnation as authorized by this act. No sewer, outlet or disposal works of any other village, town or sewer district thereof, or city, shall be constructed in any village without the approval of the board of sewer commissioners of the village in which such sewer, outlet or disposal works shall be constructed, and no such contract shall be made unless a proposition therefor be adopted by the village constructing the sewer, outlet or disposal works, stating the maximum expense.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 276; originally revised from L. 1889, Ch. 375, sec. 3, as amended by L. 1896, Ch. 202.

Amended by L. 1909, Ch. 212; L. 1912, Ch. 122, and L. 1915, Ch. 25. In effect March 4, 1915.

§ 277. Annual report of sewer commissioners.

Between the first and fourth day of March in each year, the board of sewer commissioners shall file with the village clerk a report containing a statement of the following facts:

1. The amount of money on hand at the beginning of the preceding fiscal year, and the receipts from all sources during such year.
2. An itemized statement of the amount paid out during such year, and the balance on hand.
3. The outstanding indebtedness of the department, either bonded or otherwise, separately stated.
4. A statement of the principal or interest which will become due during the current fiscal year on bonds or certificates of indebtedness.
5. The improvements and extensions made during such preceding year, and the general condition of the sewer system.
6. Such other facts as the board deems important for the information of the village, together with such recommendations concerning the department as may be deemed proper.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 277; originally revised from L. 1889, Ch. 375, sec. 12.

Legal character of commissioners is not that of independent officers acting for themselves but they are instruments of the municipal government. They perform a duty which is primarily charged upon the village, they exist solely for the benefit of the village, and have no duty disconnected with it. *Bolton v. Village of New Rochelle*, 84 Hun, 281 (1895), 28 N. Y. Supp. 825.

§ 278. Sewer connections.

The board of sewer commissioners shall cause a notice to be published in the official newspaper of the village and in all other newspapers published therein requiring the owners or occupants of any and all property fronting or abutting on any street or portion thereof in or upon which any public sewer is about to be laid or is being laid or has been laid by the said board to make and lay connection pipes to and from the sewer mains in said street or any portion thereof in front of each separate piece of property and where directed by said board, within such time and in such manner and under such inspection as said board shall prescribe, and whenever any such owner or occupant shall have made default in making such connections with said sewer mains

opposite the land and premises owned or occupied by him as directed in and required by said printed notice therefor in the manner and within the time specified, the said board shall have power and authority to so make, extend and complete the same to the property line of the lands and premises so owned or occupied opposite thereto and in front thereof, and to connect the same with any existing connecting pipes in front thereof, and the actual expense thereof, including all labor done and materials used in doing and completing the same, shall be assessed by the trustees of the village upon each separate piece of property opposite which the same shall be done and completed and shall be a lien and liens on said premises and lots of land respectively, and the same shall be collected in the same manner as other local assessments or assessments for local improvements as provided by the special charter of the village or the general village laws of the state as the case may be, and when so collected the amount thereof shall be paid into the sewer funds of the village.

Derivation. Added by L. 1910, Ch. 259, in effect May 7, 1910.

ARTICLE XI-A.

BOARD OF PUBLIC WORKS.

(Added by L. 1910, Ch. 626)

- Section 278. Establishment of board of public works; appointments.
279. Organization of board; officers; meetings; general powers.
280. Further specific powers and duties of the board.
281. Reports.
282. Funds; how raised and applied.
283. Application of other provisions.

§ 278.* Establishment of board of public works; appointments.

After a proposition therefor has been duly adopted by the electors at an annual or special election, any village, whether incorporated under this chapter or other general law, or under a special act, may establish a board of public works therein which, when established as aforesaid, shall be subject to the provisions of this article. The board shall consist of four members. Upon the adoption of the proposition the president of the village shall forthwith, by and with the advice and consent of the board of trustees, appoint one member for a term ending on the next ensuing thirty-first day of March and the other member for such terms, respectively, that the term of one member shall expire annually on the thirty-first day of March. Thereafter one member shall be in like manner appointed annually on the last Monday in March to hold office from and including the succeeding first day of April for the term of four years; provided, however, that appointments shall take effect at the time of their confirmation by the board of trustees, and until such confirmation the incumbent whose regular term has expired shall hold over; and provided further, that if the first and second appointments submitted to the board in any year are neither of them confirmed, no further appointment shall be made for such year but the member thus holding over shall continue to serve until the thirty-first day of March of the following year. A vacancy occurring at any time and for any cause shall be filled by the appointment in like manner of a member for the unexpired term of the member whose position is thus made vacant. Appointments shall be made in such

*So in original. Duplication of section number 278 is due to passage of two bills at same session.—Ed.

manner that not over two members of the board at any time shall belong to the same political party. All appointments, whether regular or to fill a vacancy, shall be made in writing and filed with the village clerk and a certified transcript of the motion or resolution confirming the same shall be attached thereto. The members are hereby severally designated "commissioners of public works" and may be referred to as such. No such commissioner shall hold any other village, school or town office during his term and no person shall be appointed such commissioner who is not a resident of the village and a qualified elector therein; the commissioners shall serve without compensation and shall have no pecuniary interest in any contract or dealing with the said board of public works of the village, in any matter under the official management of the board. Every commissioner shall, before entering upon the discharge of his duties, take and file with the village clerk the constitutional oath of office.

Derivation. Added by L. 1910, Ch. 626, in effect June 24, 1910. ✓

§ 279. Organization of board; officers; meetings; general powers.

Within ten days from the original appointment of members of the board, and within a like period each year after the thirty-first day of March, the board shall meet in the trustees' rooms or in such other place as the trustees may provide as its office and choose from their number a president, to serve for one year, and a clerk to hold office at the pleasure of the board. The clerk shall receive such salary as the board of public works may, from time to time by resolution, determine, payable as the salaries of other village officers or employees are paid. It shall be the duty of the clerk to record the proceedings of the board of public works in a book to be kept for that purpose, and perform such other duties connected with the office as shall be required by said board. Said board shall meet each month and at such other times as they may decide. The said board is hereby authorized and empowered to make rules, not inconsistent with law, as to its meetings and all other matters under its control. Said board of public works shall in and for the village have all the powers and perform all the duties of commissioners of highways in towns, except as herein otherwise provided. The said board is vested with the charge, management, control and maintenance of the highways, streets,

storm water sewers, gutters, curbs, sidewalks, public parks, places and squares within the village and of all the machinery, tools and implements used in connection therewith, and of naming the streets and giving numbers to lots and tenements and changing the same. Upon the organization of said board of public works all of the property and effects owned by the village used or to be obtained for use in connection with the matters to which the provisions of article six of this chapter, or like provisions in the special act incorporating the village pertain, shall be under the direction and management of said board of public works. All the powers and duties vested by law in the board of trustees of said village, as to the streets, sidewalks, curbs, gutters, storm water sewers, public places, squares, parks and bridges are hereby transferred to and conferred upon such board of public works.

Derivation. Added by L. 1910, Ch. 626, in effect June 24, 1910.

§ 280. Further specific powers and duties of the board.

The said board of public works shall have power:

1. To appoint and employ a superintendent of streets, who shall be a resident of said village, fix his salary and remove him at pleasure. He shall, under the direction and control of the board of public works, have the care and superintendence and repair and keep in order the highways, streets and parks in said village.

2. To make contracts relating to the construction and repair of bridges, highways, streets, curbing, storm water sewers, sidewalks, public places, squares and parks, cleaning streets and the removal of dirt therefrom, the grading, paving, repaving and macadamizing of all streets, public places and squares, and the provision of all materials, machinery, implements, utensils and labor therefor.

3. To construct, lay out, extend, alter, straighten all streets, sidewalks, curbs, gutters, storm water sewers, public places, squares and parks in said village; no street shall be discontinued and no new street opened without the consent of all persons owning or interested in lands thereon, except by proceedings under the highway law.

4. To grade, pave, repave or macadamize any street or section of a street or any public place or square and to fix and regulate the grade line of streets and sidewalks, and to cause said walks and gutters to be made and curbs to be set of such materials as it may direct.

5. To cause all necessary surveys, maps and profiles relating to streets and sidewalks, existing at the time or which may thereafter exist, and to any work within its jurisdiction, to be made.

6. To regulate the planting, trimming, rearing or removing of trees in the streets, public parks, places and squares in the village.

7. To improve and ornament the public parks, pleasure grounds and to make regulations in the management and use thereof.

8. To regulate the use of storm water sewers and to grant permits therefor.

Derivation. Added by L. 1910, Ch. 626, in effect June 24, 1910.

§ 281. Reports.

After the close of the fiscal year and prior to the time when the annual financial report of the trustees is required to be published, the said board of public works shall make out and file with the village clerk a report, in writing, containing a statement of the following matters:

1. The amount of money on hand at the beginning of the preceding fiscal year, under its control, and the receipts from all sources during said year.

2. An itemized statement, in detail, of the amount paid out during said year, to whom and what for, and balance on hand.

3. The outstanding indebtedness of said board.

4. The improvements and extensions made during said preceding year and the general condition of its department.

5. An estimated statement of the amount necessary to defray the cost.

(a) For cleaning the streets.

(b) For ordinary repairs to streets.

(c) For the portion of the expense of paving and curbing.

(d) For the maintenance, ornamentation and improvement of the public parks.

(e) For the care and ordinary repairs of the storm water sewers.

(f) For extending the storm water sewers.

(g) For the purchase or repair of machinery, implements and utensils for the use of the board.

(h) For salaries.

(i) For other expenses of said board not specifically mentioned.

(j) Such other facts as said board deems important for the information of the village, together with such recommendations as it may deem proper.

(k) Said report shall be published with the annual report of the board of trustees of said village.

Derivation. Added by L. 1910, Ch. 626, in effect June 24, 1910.

§ 282. Funds; how raised and applied.

The board of trustees shall place the amount so stated and estimated in the village budget and tax assessment as part of the ordinary expenses of the village and raise the same by tax, provided, however, that if the sum so estimated exceeds in the aggregate the sum of fifteen thousand dollars in a village of the first class, five thousand dollars in a village of the second class or twenty-five hundred dollars in a village of the third class, the same shall not be thus raised without the approval of the electors of the village as shown by a proposition therefor adopted at the annual election occurring next after the filing of such estimate. If any such estimate, submitted to the electors pursuant to the above requirements, is not approved then the amount to be raised as aforesaid for the board of public works, for the year to which such estimate relates, shall be the maximum sum above specified for village of the class to which the village belongs. When available therefor, the village treasurer shall place the moneys so raised to the credit of the street fund, which fund shall be applied only to the payment of drafts, or orders issued by said board of public works, signed by its clerk and president. In case the board of public works shall at any time determine that the amount so placed to the credit of the board of public works is more than will be necessary to defray the expenses of said board of public works for such current year, the said village treasurer shall by direction of said board of public works transfer the excess thereof from the street fund to any other fund of said village. In a village having a board of public works all moneys required for exercising its powers and duties shall be payable exclusively from the street fund.

Derivation. Added by L. 1910, Ch. 626, in effect June 24, 1910.

§ 283. Application of other provisions.

All provisions of this chapter conferring powers or imposing duties generally upon all municipal boards as such, without reference to the particular functions of any such board, shall apply to the board of public works; and a board of public works established under this article may be abolished in the manner provided by this chapter for the abolition of separate municipal boards. In the event of such abolition, the powers and duties of the board of public works, so far as they were previously imposed on and exercised by the board of trustees, shall revert to the latter board.

Derivation. Added by L. 1910, Ch. 626, in effect June 24, 1910.

ARTICLE XII.

CEMETERIES.

- Section** 290. The acquisition of lands for cemeteries.
291. Division into lots; conveyances of lots.
292. Ordinances.
292a. Id.; village of Watkins.
293. Interment of strangers.
294. Record of interments.
295. Property in trust.
296. Annual report of cemetery commissioners.
297. Powers of park commissioners.

§ 290. The acquisition of lands for parks or cemeteries.

The board of park or cemetery commissioners of a village may, in behalf of the village, accept by gift, grant or devise thereto, land for a village park or village cemetery within the village, or wholly within three miles of the boundaries thereof; or may require the board of trustees to submit to a village election, a proposition to purchase for such purpose any lands so located, specifying the maximum amount to be paid therefor and the mode of raising such amount. If the proposition be adopted, the board of cemetery commissioners may purchase such lands accordingly, or, if unable to agree with the owners for the purchase thereof, may acquire the title thereto by condemnation; but if the commissioners appointed in the condemnation proceedings shall fix the value of the land at a larger amount than authorized to be paid therefor by such election, the condemnation proceedings shall be abandoned and the costs of the defendant shall be paid by the village unless payment of such larger amount shall be authorized at a village election.

All lands acquired for a village park or cemetery shall be a part of the territory of the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 290; originally revised from L. 1870, Ch. 760, sec. 1, as amended by L. 1892, Ch. 518 (not repealed); L. 1847, Ch. 209, sec. 1, as amended by L. 1872, Ch. 696, secs. 2, 3; L. 1870, Ch. 291, tit. 3, sec. 3, subd. 24.

Amended by L. 1909, Ch. 469, in effect May 24, 1909.

Cross references. Acquisition of land, see General Municipal Law, secs. 160-162; sale and mortgage of cemeteries, see Real Property Law, sec. 450; injury to grave stones, see Penal Law, sec. 1427; killing or injuring birds or animals, etc., see Penal Law, sec. 1425, subd. 10; municipal power to declare cemetery a nuisance, see Joyce on Nuisances, sec. 338.

Revisers' note (1897). The act of 1847, as amended by Laws 1872, chap. 696, prescribes that the amount to be expended for cemeteries shall not exceed \$10,000 in villages of less than 4,000, or to exceed \$20,000 in other cases. This section leaves the amount to be fixed by the electors. The act of 1870 (chap. 760) authorizes the acquisition of land without the village, but does not specify the distance. Section 290 of the revision fixes the distance at not more than three miles.

Land may be condemned for the purpose of a public cemetery, where the public in general have a right to interment. *Farneman v. Mt. Pleasant, etc., Ass'n. (Ind.)*, 35 N. E. Rep. 271.

§ 291. Division into lots; conveyances of lots.

The board of cemetery commissioners has the supervision and control of all village cemeteries. It shall cause the same to be divided into lots, and provide for the conveyance thereof to individuals for the sole purpose of interments, and upon the payment of the purchase-price of any lot, shall, in the name of the village, execute, acknowledge and deliver a conveyance to the purchaser thereof. The clerk of the village shall keep a record of the sale of each lot, its number, the date of sale and the name of the purchaser; and shall record each conveyance thereof. No sale, transfer or assignment of such lot or any interest therein subsequent to the sale by the village shall be valid, unless by an instrument in writing signed and duly acknowledged and recorded in the office of the village clerk. The clerk shall be entitled to receive ten cents per folio for the recording of each conveyance.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 291; originally revised from L. 1847, Ch. 209, sec. 5.

§ 292. Ordinances.

The board of park or cemetery commissioners may adopt reasonable ordinances for:

1. The care, management and protection of the park or cemetery grounds.
2. The use, care and protection of lots in such cemeteries.
3. The conduct of persons within the park or cemetery grounds, and the exclusion of improper persons therefrom.
4. Regulating the dividing marks between the various lots and parts of lots in cemeteries and their size, shape and location.
5. Preventing improper monuments, effigies and structures within the same.
6. Regulating the introduction and growth of plants, trees and shrubs within such grounds.

7. The prevention of the burial in any lot or part of any lot of any person not entitled to burial therein.

The board of park or cemetery commissioners may fix the penalties, not to exceed twenty dollars, for violations of such ordinances. Such ordinances, when adopted, shall be printed and conspicuously posted in at least five places upon the cemetery grounds.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 292; originally revised from L. 1847, Ch. 209, sec. 4.

Amended by L. 1909, Ch. 469, in effect May 24, 1909.

Cross references. Violation of ordinances, see ante, sec. 93; approval by board of trustees, see ante, sec. 94; when ordinance takes effect, see ante, sec. 95.

Revisers' note (1897). The last sentence is new. The provisions of the section are somewhat broader than the act of 1847.

Ordinance may forbid burial of the dead within the city limits and this notwithstanding the fact that at the time the cemetery association took the conveyance of its lands, it was lawful to use them for cemetery purposes. *People v. Pratt*, 129 N. Y. 68 (1891).

§ 292-a. Id. Village of Watkins.

The board of park or cemetery commissioners of the village of Watkins, in the county of Schuyler, shall have, in addition to the powers granted by section two hundred and ninety-two of this chapter, the power to assess the owners of lots in any cemetery in such village an amount not exceeding two dollars per year for the purpose of raising moneys to keep the lots in such cemetery in good and proper condition, and the trustees of such village for that purpose shall have all the powers mentioned in section seventy-two of the membership corporation law.

Derivation. Added by L. 1915, Ch. 203. In effect April 5, 1915.

§ 293. Interment of strangers.

The board of cemetery commissioners shall reserve a portion of the ground in any such cemetery for the interment of strangers and other persons who may die in the village under circumstances which render it unreasonable to require payment for making such interment.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 293; originally revised from L. 1847, Ch. 209, sec. 6.

§ 294. Record of interments.

The board of cemetery commissioners shall cause an accurate record to be kept of every interment in such cemetery, specifying the lot in which such interment is made, the time when made, and the name, age and place of birth of the person interred, if these particulars can be conveniently ascertained.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 294; originally revised from L. 1847, Ch. 209, sec. 7.

§ 295. Property in trust.

The board of park or cemetery commissioners of a village may take and hold any property given, bequeathed or devised to it in

trust, to apply such property or the income thereof for the improvement or embellishment of such park or cemetery, or the erection or preservation of a building, structure, fence or walk therein, or, in any such cemetery, for the renewal, erection or preservation of a tomb, monument, stone, fence, railing or other erection or structure, on or around any lot therein or the planting or cultivation of trees, shrubs, flowers or plants in or about a lot therein or for otherwise caring for and maintaining a lot therein, according to the terms of such grant, devise or bequest.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 295.

This section was new in former Village Law.

Amended by L. 1909, Ch. 469, in effect May 24, 1909.

This section is broad enough to apply to private lots, but must be construed with other provisions of law relative to the construction and validity of trusts, and is limited by statutes regulating the suspension of the power of alienation. *Matter of Waldron*, 57 Misc. 275 (1907), 109 N. Y. Supp. 681.

§ 296. Annual report of park and cemetery commissioners.

Between the first and fourth day of March in each year, the boards of park and cemetery commissioners shall file with the village clerk a report containing a statement of the following facts:

1. The amount of money on hand at the beginning of the preceding fiscal year, and the receipts from all sources during such year.

2. An itemized statement of the amount paid out during such year and the balance on hand.

3. The outstanding indebtedness of the department, either bonded or otherwise, separately stated.

4. The estimated deficiency in the amount necessary to pay principal or interest or the expenses of the department during the next fiscal year, after applying thereto the probable amount available from the park or cemetery fund.

5. The improvements made during such preceding year and the general condition of the park or cemetery.

6. The number of interments made since its last annual report.

7. Such other facts as the board deems important for the information of the village, together with such recommendations concerning the department as may be deemed proper.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 296; originally revised from L. 1871, Ch. 696, but mostly new.

Amended by L. 1909, Ch. 469, in effect May 24, 1909.

Revisers' note (1897). L. 1871, chap. 696, sec. 1; R. S., 9th ed., 2325, which requires cemetery commissioners to report to the board of trustees. This section provides for a fuller report, filed with the village clerk.

§ 297. Powers of park commissioners.

The board of park commissioners has the supervision and control of all village parks and the care and maintenance of the same. They shall keep any village park in repair and for that purpose shall have the use of such funds as may be appropriated by the village board therefor but the expenses thereof in any year of a village of the fourth class shall not exceed five hundred dollars; in a village of the third class, one thousand dollars; in a village of the second class, fifteen hundred dollars, and in a village of the first class, two thousand dollars. If the estimated expense for maintaining the same in any one year will exceed the above amounts such estimated expense can only be incurred when authorized by a proposition adopted at an election.

Derivation. Added by L. 1909, Ch. 469, in effect May 24, 1909.

ARTICLE XIII.

REINCORPORATION.

- Section 300.** Reincorporation of special village under this chapter.
301. Notice and conduct of election.
302. Certificate of election.
303. Effect of reincorporation.
304. Determination of number of trustees.
306. Reincorporation of certain villages confirmed.

§ 300. Reincorporation of special village under this chapter.

A village incorporated by special law and subject to its provisions may be reincorporated under this chapter by adopting a proposition therefor. Such a proposition may be submitted at an annual election or at a special election to be called for that purpose.

The board of trustees of such a village may, upon its own motion, and shall, upon the petition of twenty-five electors assessed upon the last assessment-roll of the village, cause to be submitted at a village election a proposition for such reincorporation. The ballots to be used at such an election may be written or printed, and shall contain either the words "For the reincorporation of the village of (naming it) under the village law," or "Against the reincorporation of the village of (naming it) under the village law."

A proposition for the reincorporation of a village under this article shall not be submitted at an election, either annual or special, during the months of February or March.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 300.

This article in the former Village Law was a substitute for L. 1870, Ch. 291, tit. 8, sec. 30, as amended by L. 1875, Ch. 339.

Adult resident woman may sign petition. Rept. of Atty.-Gen. (1898), 71.

Frequency of submission of proposition of reincorporation. Rept. of Atty.-Gen. (1902), 225.

A veteran, whose real estate, purchased with pension money, is exempt, may vote on question. Rept. of Atty.-Gen. (1898), 108.

Time of submission is discretionary but such discretion is not arbitrary and must be reasonably exercised. The trustees should not delay the submission for a period of eight months in order that the question may be submitted at a general election. *People v. Daley*, 89 App. Div. 156 (1903), 85 N. Y. Supp. 429.

§ 301. Notice and conduct of election.

If the proposition is to be submitted at an annual election notice thereof shall be given by the board of trustees by posting notices in five public places in the village, and publishing the same in each newspaper actually printed therein, if any, at least twenty days before such annual election. If it is to be submitted at a special election notice of such election and of the submission of such proposition thereat shall be given in the same manner and for the same time as for the submission of such a proposition at an annual election. Such a special election shall be held by the same officers and conducted and the result canvassed in the same manner as provided by law for an annual election in such village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 301.

Persons entitled to vote are those who would have a right to vote at a village election held under the special law. *Matter of Village of Sag Harbor*, 32 Misc. 624 (1900), 67 N. Y. Supp. 574.

Election for reincorporation not invalid because women taxpayers were not permitted to vote. *Ward v. Kropf*, 120 N. Y. Supp. 476 (1910).

§ 302. Certificate of election.

The officers conducting such election shall make a certificate thereof, showing the whole number of votes cast upon such proposition, and the number in favor of and against it, and within twenty-four hours after the closing of the polls of such election, must file such certificate in the office of the village clerk. If the proposition be adopted the village clerk shall within ten days after the election file a certified copy of such certificate in the office of the clerk of each county in which any part of such village is situated, and also in the office of the secretary of state.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 302.

County Court has no jurisdiction to hear and determine an appeal from a certificate filed by the village election officers who conducted the election relative to reincorporation. *Matter of Village of Sag Harbor*, 32 Misc. 624 (1901), 67 N. Y. Supp. 574.

§ 303. Effect of reincorporation.

If the proposition be adopted the reincorporation of the village under this chapter shall take effect immediately upon the filing of the certificate of election in the office of the village clerk. From and after such filing such village shall be deemed incorporated

under this chapter, and shall possess all the powers, enjoy all the privileges, and be subject to all the liabilities, in all respects and for all purposes, as if it had been originally incorporated thereunder. Such reincorporation shall not affect any action then pending or cause of action existing by or against such village, nor property rights thereof under the provisions of any law to which it was then subject. The officers of the village in office when the reincorporation takes effect shall continue to hold their offices until noon on the Monday following the date when the next annual election in such village may be held under this chapter, at which time their terms of office shall expire.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 303.

Legislative may confirm result of a special election held for the purpose of determining the question of reincorporation. See *People v. Sutphin*, 106 N. Y. 163 (1901), mod'g 53 App. Div. 613.

§ 304. Determination of number of trustees.

A special election to determine the number of trustees to be elected in such village at the first annual election after such reincorporation, shall be held in the month of February next preceding, in the manner and upon the notice prescribed by article two of this chapter. If the number of trustees be not determined before such first annual election the village shall elect two trustees. At such first annual election after reincorporation one-half of the trustees shall be elected for one year, and one-half for two years.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 304.

§ 305. Reincorporation of certain villages confirmed.

All villages in the state incorporated by special laws and subject to their provisions which have attempted to reincorporate under the provisions of chapter four hundred and fourteen of the laws of eighteen hundred and ninety-seven and the acts amendatory thereof, between July one, eighteen hundred and ninety-seven, and January one, nineteen hundred and four, and which have held their elections, elected their officers and conducted their municipal affairs under or agreeably or substantially under or substantially agreeably to the provisions of said law for the period of one year, or longer, are hereby declared to be regularly and

duly incorporated villages under this chapter; and, so far as any defects, omissions or irregularities in the proceedings for such reincorporation affect their annual and special elections and meetings and their acts and proceedings at such elections and meetings and the election of their presidents and their other village officers and all the acts and proceedings of their boards of trustees and all the acts and proceedings of their officers, their said annual and special elections and meetings and their acts and proceedings at said elections and meetings and the election of their presidents and trustees and their other village officers and all the acts and proceedings of their boards of trustees and all the acts and proceedings of their officers, are hereby declared to be legal and valid and so far as any defects, omissions or irregularities in their proceedings for such reincorporation affect the title to the offices held by their presidents, trustees, and other officers, their said presidents, trustees, and other officers are hereby declared to be legally holding and entitled to their offices *de jure* until the expiration thereof as provided by this chapter.

This section shall not affect any action or proceeding now pending in any court.

Derivation. L. 1905, Ch. 259, secs. 1, 2.

Consolidator's note (1909). The words "the Village Law," in lines 4 and 9, changed to "chapter four hundred and fourteen of the laws of eighteen hundred and ninety-seven and the acts amendatory thereof" and "said law," to avoid misconstruction; the references in those places being to the present Village Law, which is repealed by this chapter. We also recommend that as there may be villages which have attempted to reincorporate since January 1, 1904, that the words "nineteen hundred and four" be changed to "nineteen hundred and eight" in order to include them.

Confirmation by special act and the lapse of twenty-five years will cure any defect or irregularity in regard to the time the polls were open for voting. *People v. Sutphin*, 53 App. Div. 613 (1900), 66 N. Y. Supp. 49.

ARTICLE XIV.

PROVISIONS APPLICABLE TO CERTAIN VILLAGES.

- Section 310. Application.
- 311. President's term of office.
 - 312. Board of police commissioners.
 - 313. Consolidation of boards.
 - 314. Abolition of boards.
 - 315. Treasurer's additional duties.
 - 316. Salary of the president and trustees.
 - 317. Tax levy.
 - 318. Contract for lighting.
 - 319. Collection of taxes by treasurer.
 - 320. Borrowing money.
 - 321. Submission of propositions.

§ 310. Application.

This article shall apply to all villages whose population is shown by the last state census to exceed fourteen thousand inhabitants.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 339a, as added by L. 1906, Ch. 34.

§ 311. President's term of office.

In every such village the term of office of the president shall be two official years.

Derivation. Former Village Laws (L. 1897, Ch. 414), secs. 339b, as added by L. 1906, Ch. 34.

§ 312. Board of police commissioners.

Every such village by adopting a proposition therefor at an annual election may establish or abolish a separate board of police commissioners composed of five members who must at the time of their election and during their term be the owner of property assessed upon the last preceding assessment-roll of the village. If the proposition to establish such board be adopted, the board of trustees at its next annual meeting shall appoint such commissioners for the term of one, two, three, four and five years respectively; and at each annual meeting thereafter the board of trustees shall appoint one commissioner for the full term of five years. Said board shall have all the powers and is subject to all

the liabilities and must perform all the duties of the president and board of trustees so far as the same relate to the police or police department, and to the exclusion of said president and board of trustees.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 339c, as added by L. 1906, Ch. 34.

Consolidator's note (1909). Word "owner" changed to "owners" to correct an obvious error. As the section relates to more than one person the plural should be used instead of the singular number.

§ 313. Consolidation of boards.

In every such village the powers and responsibilities of one or more boards of commissioners may be conferred upon an existing board by the adoption of a proposition therefor at an annual election and thereupon such board shall possess all the powers and responsibilities of such other board or commission consolidated with it, until such consolidation be abolished by adopting a proposition therefor at an annual election.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 339d, as added by L. 1906, Ch. 34.

§ 314. Abolition of boards.

A separate board of commissioners or a consolidation of one or more boards of commissioners may be abolished by adopting a proposition therefor at an election. The abolition of such a board or consolidation shall take effect immediately upon filing a certificate showing the adoption of the proposition. Within ten days after such certificate is filed, the abolished board shall deliver to the clerk of the village its records, books, and papers; and shall also within the same time deliver to the treasurer all funds, and to the president all other property in its possession or under its control, belonging to such department.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 339e, as added by L. 1906, Ch. 34.

§ 315. Treasurer's additional duties.

In every such village the treasurer shall, if required by the board of trustees, maintain an office in a place designated and furnished by the board of trustees, and be in attendance thereat on

such days and during such reasonable hours of the day as the board of trustees may from time to time designate.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 339f, as added by L. 1906, Ch. 34.

§ 316. Salary of the president and trustees.

Every such village by adopting a proposition therefor by a majority vote of the taxpayers whose names appear on the last assessment-roll at any annual or special election may fix a compensation for the president not exceeding the sum of six hundred dollars per annum and for each of the trustees thereof not exceeding the sum of three hundred dollars per annum and which shall continue until amended or abolished by adopting a proposition therefor by voters of the same eligibility at an annual or special election.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 339g, as added by L. 1906, Ch. 34.

§ 317. Tax levy.

In every such village the board of trustees may include in the levy of taxes for the current fiscal year in addition to the items specified in section one hundred and ten of the village law, such sum as the board deems necessary to meet expenditures from the light fund for the current year not exceeding three-tenths of one per centum of the total valuation of the property assessed upon the annual assessment-roll of the last preceding year; and such additional sums as shall be deemed necessary to meet all other expenditures of the village for the current fiscal year not exceeding one-tenth of one per centum of such total valuation.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 339h, as added by L. 1906, Ch. 34.

§ 318. Contract for lighting.

In every such village the board of light commissioners may contract in the name of the village, with an individual or corporation, for lighting the streets, public grounds and public buildings of the village by gas, electricity or other substance; but such contract shall not be made for a longer period than five years, nor at an

expense for each fiscal year exceeding three mills on every dollar of taxable property of the village as appears on the last preceding village assessment-roll, unless authorized at a village election.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 339i, as added by L. 1906, Ch. 34.

§ 319. Collection of taxes by treasurer.

In every such village which has no collector, the tax roll and warrant shall be delivered to the treasurer of the village, and the provisions of the village law relating to the delivery of a tax roll and warrant, the extension of the time for the collection of taxes, the fees for collection, and the return of such tax roll and warrant, apply to the roll and warrant so delivered to a treasurer, so far as practicable. Upon the delivery of the roll and warrant to the treasurer, he shall publish in each newspaper actually printed in the village, once in each week for four consecutive weeks, and post in five public places in the village, a notice that such tax roll and warrant have been left with him for the collection of the taxes therein levied, and designating one or more convenient places in the village where he will receive taxes for thirty days after the first publication and posting of said notice, from nine o'clock in the morning until four o'clock in the afternoon. The treasurer shall attend at the time and place specified in said notice, and shall proceed to collect the taxes and shall possess all the powers of a town collector. The fees for collecting said taxes belong to the village and the treasurer must account therefor.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 339j, as amended by L. 1906, Ch. 34.

§ 320. Borrowing money.

In every such village money may be borrowed at any time in the fiscal year after the first day of April and prior to the annual levy of taxes, but not exceeding one per centum of the total valuation of the property assessed upon the annual assessment-roll of the last preceding year, or in anticipation of taxes already levied for the current fiscal year, but not in excess of the amount thereof after deducting any sums borrowed prior to said tax levy, and it must be payable within such year.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 339k, as added by L. 1906, Ch. 34.

§ 321. Submission of propositions.

In every such village the board of trustees shall at least five days before the annual election cause to be published at least once in the official paper if such paper is published in the village and to be published in said paper at least twice thereafter and prior to said election and to be conspicuously posted in at least ten public places in said village a notice setting forth in full all propositions to be voted upon.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 3391, as amended by L. 1906, Ch. 34.

ARTICLE 14-A.

PROVISIONS APPLICABLE TO A VILLAGE EMBRACING THE ENTIRE
TERRITORY OF A TOWN.

- Section 322. Application.
323. Succession of powers and duties.
324. Water districts.
325. Lamp or street lighting districts.
326. Sewer districts.
327. Highways and streets.
328. Fire districts.
329. Taxation and assessment.
329a. Obligations and property.
329b. Miscellaneous town charges.
329c. Officers.

§ 322. Application.

This article shall apply to any village which has been or may hereafter be incorporated to embrace the entire territory of a town.

Derivation. Added by L. 1915, Ch. 305. In effect April 14, 1915.

§ 323. Succession of powers and duties.

In every such village, all the powers and duties imposed by law upon the town board of the town or upon any officer of the town or commissioners or boards of any district in relation to any water district, or any lamp or street lighting district, or any sewer district, or any fire district, created or organized under the provisions of the town law, shall devolve and are hereby imposed upon the board of trustees of such village, and all contracts in relation to such districts or any improvements therein shall be performed and completed by the said board of trustees.

Derivation. Added by L. 1915, Ch. 305. In effect April 14, 1915.

§ 324. Water districts.

In every such village any water districts created or organized under the provisions of the town law, shall continue and the board of trustees shall be and they are hereby vested with the full management and control of such districts, and the water systems constructed therein, and the assessment of the cost and expenses

thereof, which water districts shall until discontinued in the manner hereinafter provided, be managed, controlled and operated and may be extended or enlarged, by said board of trustees in the manner provided in the town law; provided, however, that if any such village shall adopt a general village water system, such water district or districts may be discontinued upon the adoption of a proposition for such discontinuance at a village election. In every such village any water supply district organized under the town law or under the transportation corporations law shall continue and the boundaries thereof may be extended or modified by the board of trustees, or the board of trustees may establish one or more additional water supply districts in said village, by filing a certified copy of a resolution describing the bounds thereof as extended or modified, or as established by the board of trustees, in the office of the village clerk; and may contract with any corporation in the name of the village for the delivery of a supply of water for fire or other public purposes to such districts and the whole village shall be bound by such contract, but the rental or expenses thereof shall annually, and in the same manner as other expenses of the village are raised, be assessed, levied upon and collected only from the taxable property within such water supply districts respectively. No such contract shall be made for a longer period than five years, nor for an annual expense exceeding three mills upon each dollar of taxable property within such water supply districts.

Derivation. Added by L. 1915, Ch. 305 and amended by L. 1917, Ch. 585, in effect May 21, 1917.

§ 325. Lamp or street lighting districts.

In every such village any lamp or street lighting districts created or organized under the provisions of the town law, shall continue and the board of trustees shall be and they are hereby vested with the full management and control of such districts, and the lighting system thereof, and the assessment of the cost and expenses of such lighting, which lighting district shall until discontinued in the manner hereinafter provided, be managed, controlled and operated and may be extended or enlarged, by said board of trustees, in the manner provided in the town law; provided, however, that the board of trustees of such village may, in its discretion, by resolution, discontinue any such lighting district, in which case the provisions of the village law in relation to street lighting shall apply to any such village.

Derivation. Added by L. 1915, Ch. 305. In effect April 14, 1915.

§ 326. Sewer districts.

(1) In every such village any sewer district created or organized under the provisions of the town law shall continue, and the board of trustees shall be and they are hereby vested with the management and control thereof, and of the sewer systems constructed or to be constructed therein, and of the assessment of the costs and expenses thereof, which such sewer districts shall be managed, and the costs and expenses thereof shall be assessed, as herein provided.

(2) In case a system of sewers to serve the said district shall have been authorized as provided in the town law and maps and plans therefor shall have been approved by the state department of health and by the conservation commission, the board of trustees may construct and complete the sewers so authorized and may make extensions thereof and may modify and change the plans thereof, by resolution at any regular or at any special meeting called for the purpose; provided notice that the board of trustees will act upon the question of authorizing the construction of specified portions of such sewer system, or specified extensions thereof, or upon specified modifications thereof, at a time and place to be stated therein, shall have been posted in at least five public places in the said sewer district and shall have been published in the official paper, or if there be no official paper, in such newspaper published in the county as the board of trustees may select, at least ten days before such meeting.

(3) In case additional construction under the provisions of the preceding subdivision hereof shall be so authorized, the board of trustees shall estimate the cost thereof and may issue the bonds or other obligations of the village to the amount thereof, which bonds or other obligations shall be a village charge. Said bonds or other obligations shall be payable within thirty years in annual instalments, commencing not more than five years from the date thereof, shall bear interest at a rate not exceeding five per centum per annum, and shall be sold on public notice in the manner prescribed by section one hundred and twenty-nine of the village law. Any moneys advanced from the general fund of such village for the payment of the principal and interest of said bonds or other obligations shall be reimbursed from the assessments hereinafter provided.

(4) In case the board of trustees shall authorize the construction of any such extension or extensions to the sewer system, which have not been approved by the state board of health and by the conservation commission, or in case the board of trustees shall modify or change the plans for the construction and completion of the said

sewer system or any portion thereof or of any such extensions which have theretofore been approved by the state board of health and by the conservation commission, maps and plans of such extension or extensions and of the portions of the system so modified or changed, prepared by a competent engineer under the authority and direction of the board of trustees, shall be approved by the state board of health and the conservation commission as required by law before the same shall be constructed.

(5) The board of trustees shall advertise for proposals for the construction of such extension or extensions according to such maps and plans either under an entire contract or in parts, or sections, as the board may determine, and such advertisement shall be published once in each of two successive weeks in the official paper, or if there be no official paper then in such newspaper published in the county as the trustees may select. The board of trustees may accept or reject any or all proposals and shall let the contract to the lowest responsible bidder. The board of trustees may require bidders to give a bond or other security to be forfeited to the village in case the bidder to whom the award is made shall refuse or neglect to enter into the required contract, and may require the successful bidder to give a bond or other security in an amount to be fixed by the board of trustees conditioned upon the faithful performance of the contract. Such contracts shall be executed in the name of the village in duplicate and one copy thereof shall be filed in the office of the village clerk.

(6) The board of trustees may employ engineers, and such inspectors as may be necessary, to prepare maps, plans, specifications and estimates, and to supervise the construction, and may fix their compensation which, together with the cost of preparing the maps, plans and specifications, and the cost of the necessary real property or interest therein, shall be treated as a part of the expense of construction.

(7) If the board of trustees are unable to agree with the owners for the purchase of any real property or any interest therein necessary for the construction of the said sewer system or of any extension or extensions thereto they may acquire the same by condemnation, in the name of the village.

(8) The board of trustees during the first month of the fiscal year shall determine by resolution the amount of money required to pay the principal and interest of all outstanding bonds issued to pay the cost of constructing the sewer system, and the extensions thereto, maturing during such fiscal year, and the cost of maintaining and

operating the same, and all other lawful charges against the said sewer system during such year, and shall on or before the first Tuesday of the fourth month of the fiscal year, if a village of the first or second class, and on or before the first Tuesday of the third month of the fiscal year, if a village of the third or fourth class, assess the amount thereof, from year to year, upon the lands within the sewer district in proportion as nearly as may be to the benefit which each lot or parcel shall derive therefrom, and shall enter such assessments in a book suitable for the purpose, which shall show the section, block and lot number, or other suitable description of each piece or parcel of land in the said sewer district, with the amount assessed against each such piece or parcel of land respectively. Thereafter the provisions of the village law relating to the filing, correction, completion and review of the village assessment-roll, and relating to the levy, collection and lien of village taxes shall apply to the filing, correction, completion and review of such sewer assessment and to the levy, collection and lien thereof, as nearly as may be, except that the powers and duties of the assessors with respect thereto shall devolve upon and be performed by the board of trustees.

(9) In case there be an unexpended balance remaining after the completion of any contract or contracts for the construction of any such sewer system or of any extension or extensions thereto the board of trustees shall, by resolution, use the same or any part thereof for the payment of the cost of constructing extensions to such sewer system in said district or for the purpose of retiring outstanding bonds issued to pay for the construction of such sewer system or extensions thereto.

(10) The board of trustees shall adopt rules and regulations to govern the maintenance and use of the sewer system and shall therein fix the amount of fees that shall be chargeable to individuals or property owners who may wish to enter or use the sewer system, which fee shall be sufficient in amount to pay for the cost of inspection, and may prescribe the terms and conditions upon which connections may be made therewith, and the manner in which the same shall be made, and may provide reasonable penalties for the violation of such rules

and regulations to be collected at the suit of the village for the use of the sewer district.

(11) The board of trustees may cause a notice to be published in the official paper and posted in at least ten conspicuous public places in the district, requiring the owners or occupants of all property fronting or abutting on any street or portion thereof in the town in which any public sewer is about to be laid or is being laid or has been laid to make and lay connection pipes to and from the sewer mains in such street or any portion thereof in front of each separate piece of property, within such times and in such manner and under such inspection as such board shall prescribe; and whenever any such owner or occupant shall have made default in making such connection as directed in and required by such printed notice therefor, in the manner and within the time specified, such board shall have power and authority to make, extend and complete the same to the property line of the lands and premises so owned or occupied opposite thereto and in front thereof, and to connect the same with any existing pipe in front thereof, and the actual expense thereof, including all labor done and materials used in doing and completing the same, shall be assessed by the board upon each separate piece of property opposite which the same shall be done and completed. Such assessments shall be made and may be collected in the manner specified in section one hundred and sixty-eight of the village law, and when collected shall be for the use of the sewer district. Such assessments shall be deemed to be assessments for sewers within the meaning of section one hundred and thirteen of the village law.

(12) In every such sewer district it shall be the duty of the owners, or if the owner be a non-resident of the district, of the occupants, of premises which can be connected with any portion of the sewer system at any time constructed, and which premises are occupied or used for residential, business, or other purposes in which sewage matter originates, to connect such premises with the said sewer system under the rules and regulations adopted by the board of trustees relating thereto, and in case such owner, or occupants, shall fail or neglect to make and complete such connections within thirty days from the

personal service upon him of a certified copy of a resolution of the board of trustees requiring such connection or connections to be made he shall be liable to a fine not exceeding fifty dollars in amount and shall, in addition thereto, be liable to a fine not exceeding ten dollars in amount for each day during which such default shall continue after the expiration of such period of thirty days, to be collected at the suit of the village for the use of the sewer district. In case the cost of such connection shall be paid by the occupant he may recover the same from the owner or may deduct the same from any sums due or to become due from him to such owner.

(13) Nothing herein shall prevent the construction of extensions to such sewer system in accordance with the provisions of article eleven of the village law.

Derivation. Added by L. 1915, Ch. 305. Repealed and new section added by L. 1917, Ch. 587, in effect May 21, 1917.

§ 327. Highways and streets.

If prior to the incorporation of any such village, the voters of any such town may have authorized the issuance of town bonds for the purpose of laying out, grading, paving or otherwise improving or constructing sidewalks in such town, the power to issue such bonds, to make the improvement for which the same were voted, and to receive and apply the proceeds thereof, shall devolve upon and be vested in the board of trustees of every such village, and such board of trustees without any further election or authority shall be and are hereby authorized and empowered to issue the bonds of such village to the amount, bearing interest and upon the terms, maturities and conditions so authorized by vote of such town, and to levy, assess and collect a tax upon the taxable property of such village in the same manner as other taxes of such village are levied, assessed and collected, sufficient to pay the interest on said bonds as the same shall accrue and sufficient also to provide for the payment of the principal thereof at maturity. If prior to the incorporation of any such village, town bonds shall

have been issued pursuant to any vote of the town for such purposes, the proceeds thereof, or any part of such proceeds that may not have been expended and applied shall be paid over to the said village to be applied and expended under the direction of the board of trustees, in the making and construction of such improvement.

Derivation. Added by L. 1915, Ch. 305. In effect April 14, 1915.

§ 328. Fire districts.

In every such village any fire districts created or organized under the provisions of the county law, shall be merged in and consolidated with such village and shall become a part of such village for fire protection purposes and all buildings, engines, fire apparatus, and other property belonging to such fire district shall be vested in such village and maintained and administered by it as a part of the fire protection system thereof. All the powers and duties of the commissioners of such fire district shall be and are hereby devolved upon and transferred to the board of trustees of such village. For the purpose of paying the principal and interest of any bonds of any such fire district which may be outstanding and unpaid at the date of the incorporation of any such village, the board of trustees of such village shall levy, assess and collect upon all the taxable property in such village, a tax sufficient to pay the interest thereof as the same accrues and sufficient also to provide for the payment of the principal of such bonds at maturity.

Derivation. Added by L. 1915, Ch. 305. In effect April 14, 1915.

§ 329. Taxation and assessment.

In every such village all property shall be assessed for taxation for state, county, town, village and district purposes, in the manner provided by the laws applicable to the county in which such village may be situated.

Derivation. Added by L. 1915, Ch. 305. In effect April 14, 1915.

§ 329-a. Obligations and property.

The outstanding obligations, contracts and bonds of any such town or of any district therein, incurred, made or issued for the purpose

of improving the highways thereof, or constructing overhead or undergrade crossings, or constructing sidewalks or for sewers or sewer districts purposes, or for water or water district purposes, or for fire district purposes, shall devolve upon and be assumed by any such village and the board of trustees of any such village, is hereby authorized and empowered and it shall be its duty to provide for the payment and discharge of such obligations, contracts and bonds by taxation or assessment of taxes in the same manner as the board of supervisors, town board, or supervisor or officers of such town, or of any district therein are or may be authorized to provide therefor or by taxation of all the taxable property in such village in any case in which by virtue of any provision of this act or of any other statute such obligations, contracts or bonds are or may be made a general village charge. All moneys, credits and property of the said town, including any maney to which said town may be entitled as state aid under the general highway law, and all the moneys, credits and property of any sewer district, water district, fire district or lamp or street lighting district thereof, shall pass to and become the property of any such village, and shall be paid over and delivered to such village by the several custodians thereof upon demand, and shall be used and applied by the said village for the purposes for which the same could lawfully have been used by the said town or by any such district therein. In every such village all taxes and assessments levied or assessed before incorporation upon the taxable property in the said town or upon the taxable property in any water district, fire district, lighting district or sewer district therein for town or district purposes, shall, when collected, be paid over to such village and used by such village for the purposes for which the same were levied and assessed.

Derivation. Added by L. 1915, Ch. 305. In effect April 14, 1915.

§ 329-b. Miscellaneous town charges.

In every such town, the town board in the month of December in each year shall present to the board of trustees of such village a statement of all town charges audited and allowed by the said town board, or by the board of town auditors, for town purposes

other than for purposes which by this article have been devolved upon such village, and the board of trustees of such village shall levy, assess and collect the amount thereof in the next tax levy in such village, and when collected, the same shall be paid to the several persons lawfully entitled thereto.

Derivation. Added by L. 1915, Ch. 305. In effect April 14, 1915.

§ 329-c. Officers.

In any such village a person otherwise qualified to hold a village office shall not be disqualified by reason of holding a town office, whether elective or appointive. In every such village there shall be four trustees, to be elected at the first village election, or at the next election after this article takes effect.

Derivation. Added by L. 1915, Ch. 305. In effect April 14, 1915.

ARTICLE XV.

MISCELLANEOUS PROVISIONS.

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330. Notice; how served.

Service of a notice under this chapter must be personal, if the person to be served can be found in the village, otherwise the notice may be served personally or by mail by depositing a copy thereof in the post office of the village, and addressed to such person at his last known place of residence. The provisions of the code of civil procedure, relating to the service of a summons in an action in the supreme court, except as to publication, apply, so far as practicable, to the services of notices under this chapter.

If a person to be served can not with due diligence be found in the village where personal service is required, or his last known place of residence can not be ascertained, the county judge of a county in which any part of the village is situated may, by order, direct the manner of such service, and service shall be made accordingly.

A service on one of two or more joint tenants, or tenants in common, shall be sufficient notice to all for any purpose requiring a notice under this chapter.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 311; originally revised from L. 1870, Ch. 291, tit. 8, sec. 22.

Cross references. Service of summons, see Code Civ. Pro., sec. 426.

§ 331. Notice; proof of posting; when publishing not required.

Whenever by this chapter or by a rule, by-law or ordinance made in pursuance thereof, a notice or ordinance is authorized or required to be posted, an affidavit thereof by the person posting the same is presumptive evidence of such posting. Whenever by this chapter, or by a rule, by-law or ordinance made in pursuance thereof, a notice or ordinance is authorized or required to be published in any newspaper and the editor or proprietor of such newspaper, or other person in charge of the publication thereof, shall fail, neglect or refuse to print or publish such notice or ordinance in such paper, after the same shall have been offered or presented for publication, the supreme court or a justice thereof may by an order and upon sufficient reason therefor being shown, dispense with such publication in such newspaper, so refusing to publish such notice or ordinance, providing the notice or ordinance shall have been posted as required by this chapter.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 312; originally revised from L. 1870, Ch. 291, tit. 8, sec. 8.

Amended by L. 1915, Ch. 401. In effect April 28, 1915.

Cross references. Proof of publication, see Code Civ. Pro., sec. 926.

See Matter of Village of Lynbrook (1911), 142 App. Div. 487.

§ 331-a. Compensation for printing.

The compensation to be allowed to the printer of a newspaper for the publishing of an ordinance, notice or other advertisement required by this chapter to be published shall be fixed by the board of trustees of the village and shall not exceed the following rate:

Fifty cents per folio for the first insertion and twenty-five cents per folio for each subsequent insertion.

Derivation. Added by L. 1915, Ch. 401, in effect April 28, 1915.

Application. The provision of this section as to compensation for publication of notices, etc., applies only to the publication of those notices, ordinances and advertisements required to be printed or published pursuant to some direction or authority contained in the Village Law.

The publishing of an advertisement for bids in connection with the construction of a municipal village water plant does not come within the class of advertisements enumerated in this section because not required by the Village Law. (Opinion of State Comptroller, April 7, 1917), 9 State Dept. Rep. 475.

§ 332. Officer not to be interested in contracts.

An officer shall not be directly or indirectly interested in a contract which he or a board of which he is a member is authorized to make on behalf of the village; nor in furnishing work or materials; nor shall such an officer act as such in any matter or proceeding, involving the acquisition of real property then owned by him, for a public improvement.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 313; originally revised from L. 1870, Ch. 291, tit. 8, sec. 12.

Cross references. Violation a misdemeanor, see Penal Law, sec. 1868.

Village treasurer is not a member of the board of trustees, and a corporation of which he is president may lawfully contract with the village for work upon public improvements. Matter of Village of Kenmore, 50 Misc. 388 (1906), 110 N. Y. Supp. 1008.

Employment by council of one of its members to render services for the municipality is against public policy, and no recovery can be had for the services so rendered. Smith v. City of Albany, 61 N. Y. 444 (1876).

Statute declaratory of the Common Law which forbids member of the council from becoming a contractor, and such statute will not be strictly construed. Smith v. City of Albany, 61 N. Y. 444 (1876).

Application. The provisions of this section are not applicable to the street superintendent of the village of Saratoga Springs, as to whom a different restriction contained in the law creating the office is applicable. Morrissey v. Sewer, Water and Street Commission (1911), 73 Misc. 432, 133 N. Y. Supp. 365.

Contracts between Village Board of Trustees and members of such board are illegal and cannot be enforced. Rept. of Atty.-Gen., Mch. 14, 1911; Mch. 15, 1911.

§ 333. Liability on unlawful contracts; failure to prosecute.

An officer or person who assumes to create a liability or appropriate money or property of the village without authority of law, or assents thereto, is personally liable for such debt, or to the village for such money or property. Each member of a village board present at a meeting thereof when such unlawful action is taken is deemed to have assented thereto, unless he expressly dissents and requests such dissent to be entered upon the minutes of the meeting. A village is not liable upon a contract made by an officer or a board in the name or on behalf of the village, unless it is authorized by law. If any person shall have heretofore appropriated or shall hereafter appropriate money or property of the village, contrary to law, and the facts in relation thereto are known to the board of trustees, and, after this section as amended takes effect, such board fail for thirty days to bring an action against such person to recover such money or property, each member of the board having such knowledge shall be guilty of a misdemeanor and liable to removal from office unless within such period of thirty days he shall file with the village clerk a written request, signed by him, requesting the bringing of such action or shall cause to be entered upon the minutes of a meeting of the board a motion made by him for the bringing of such action, or his vote in favor of such a motion.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 313; originally revised from L. 1870, Ch. 291, tit. 8, sec. 11. Amended by L. 1914, Ch. 274, in effect Apr. 11, 1914.

Those dealing with municipal agents have no right to presume that they are acting within the line of their duty but must take care to learn the nature and extent of their authority. *McDonald v. Mayor, etc., of New York*, 68 N. Y. 23 (1876).

Unfaithfulness of agent in other transactions will not relieve municipality from obligation of the contract in action. *Baird v. Mayor, etc., of New York*, 96 N. Y. 567 (1884).

Want of formal action on the part of a committee appointed by the council will not defeat a just claim for supplies furnished. *Kramrath v. City of Albany*, 53 Hun, 206 (1889), 6 N. Y. Supp. 54.

Any defense may be pleaded to an action by a contractor for local improvement, which would be available for the protection of the municipality by a suit under the Taxpayers Act. *Weston v. City of Syracuse*, 158 N. Y. 274 (1899), rev'g 82 Hun, 67; 31 N. Y. Supp. 186.

There is no quantum meruit recovery for services performed upon a contract void for want of power to make it. *Dickinson v. City of Poughkeepsie*, 75 N. Y. 65 (1878); *Bonesteel v. City of New York*, 22 N. Y. 163 (1860); *Brady v. Mayor, etc., of New York*, 20 N. Y. 312 (1859); *McDonald v. Mayor, etc., of New York*, 68 N. Y. 23 (1876); such contract cannot be ratified, *Smith v. City of Buffalo*, 1 Sheldon, 493 (1875).

Contractor has no recourse against the village in any form of action for work performed under an illegal contract. *Ward v. Kropf*, 120 N. Y. Supp. 476 (1910).

Contract not ultra vires may be ratified by the municipality. *McCloskey v. City of Albany*, 7 Hun, 472 (1876); such ratification is equivalent to original authority, *Smith v. Mayor, etc., of New York*, 21 How. Pr. 1 (1861).

Contract of president previously authorized and subsequently ratified by acceptance of services rendered will make the village liable. *Kent v. Village of North Tarrytown*, 50 App. Div. 502 (1900).

Village liable for materials used and accepted, although the contract therefor made by the village president was not authorized by the board of trustees. *Lines v. Village of Otego*, 91 N. Y. Supp. 785 (1904).

§ 334. Competency of inhabitants as justices or jurors; undertakings not required by village.

In an action brought by or against a village it shall not be an objection against the person acting as justice or juror in such action, that he is a resident of the village or subject to taxation therein. It shall not be necessary for the village to give a bond, undertaking or security to appeal or to obtain a provisional remedy, or to take or prevent any other proceeding; but the village shall be liable to the same extent as if it had given the bond, undertaking or security otherwise required by or in pursuance of law.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 315; originally revised from L. 1870, Ch. 291, tit. 8, sec. 9, as amended by L. 1892, Ch. 222.

§ 335. Board may take testimony.

The board of trustees or the board of fire, water, light, sewer or cemetery commissioners may take testimony in a proceeding pending before it. The village clerk or any member of the board of trustees may administer oaths and take affidavits upon any claim or account against the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 315; originally revised from L. 1870, Ch. 291, tit. 8, sec. 9, as amended by L. 1892, Ch. 222.

Cross references. Power to take testimony includes power to administer oaths and issue subpoenas. Code Civ. Pro., secs. 843, 854.

§ 336. Woman may institute proceeding.

Where a right is granted by this chapter to institute a proceeding, make an application, present a petition, or take an appeal, such right may be exercised by an adult resident woman who owns property assessed upon the last preceding assessment-roll of the village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 217.

This section was new in former Village Law.

Women not authorized to sign or present petition referred to in sec. 56. Rept. of Atty.-Gen. (1901), 198.

§ 337. Security by contractors.

All contracts under this chapter must be in the name of the village and the contractor must give adequate security to be approved by the officer or board with whom the contract is made.

Derivation. Former Village Law (L. 1897, Ch. 414), sec. 318.

This section was new in former Village Law.

Board acts judicially in determining who is the lowest bidder upon a municipal contract. *Gleason v. Peerless, etc., Co.*, 1 App. Div. 257 (1896), 72 N. Y. St. Rep. 592; 37 N. Y. Supp. 267.

§ 338. Arrest of disorderly persons.

A disorderly person under this chapter is subject to arrest, with or without process. A member of the police department or a peace officer may arrest a disorderly person without process for a violation of a village ordinance, committed in his presence. An officer making an arrest under this section shall immediately take the person arrested before the police justice of the village or a justice of the peace having jurisdiction, if such magistrate can be found, if not, he may detain the person arrested until such magistrate be found, not exceeding twenty-four hours. Unless the violation complained of is also a crime subject to indictment, the magistrate shall proceed forthwith to hear, try and determine such complaint, or may adjourn the hearing not to exceed five days, and in the meantime commit the offender to the lock-up or place of confinement or county jail until such day, or suffer him to go at large on executing a bond for his appearance on the adjourned day. On conviction the magistrate shall impose the penalty prescribed by the ordinance, and may also require the defendant to pay the costs of the proceeding. Unless the penalty and the costs, if imposed, be paid upon the conviction, the magistrate shall commit the defendant to the county jail of a county in which any part of the village is situated for a term not exceeding one day for each dollar of the penalty imposed.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 319, as amended by L. 1899, Ch. 217; originally revised from L. 1870, Ch. 291, tit. 8, secs. 14, 19.

The act of 1899 changed the term from not exceeding twenty days to not exceeding one day for each dollar of the penalty imposed.

Policeman has no right to arrest, without a warrant, a person violating a village ordinance, unless authorized to do so by law. *Hennessey v. Connelly*, 13 Hun, 173 (1878).

Power to arrest for violation of ordinance does not authorize an arrest upon a warrant issued long after the violation. *Fuller v. Redding*, 16 Misc. 634 (1896).

Where a local village ordinance respecting the speed of motor vehicles merely imposed a fine and did not make a violation disorderly conduct, a police officer who arrested a person for the violation of the ordinance and brought him before a magistrate was guilty of assault and false imprisonment and is liable in a civil action to recover damages therefor. *Chapman v. Selover* (1916), 172 App. Div. 858, 159 N. Y. Supp. 632.

§ 339. Action to recover penalties.

An action may be maintained by a village to recover a penalty imposed for a violation of an ordinance, and in such action an order of arrest may be issued and executed in the manner prescribed by the code of civil procedure for orders of arrests in justices' courts. In such action it shall be lawful to declare or complain generally for such penalty, stating the section of this chapter, or the ordinance, under which the penalty is claimed, and briefly setting forth the alleged violation. If the defendant in such action has no property out of which the judgment can be collected, the execution shall require him to be imprisoned in the county jail of a county in which any part of the village is situated, for a term not exceeding twenty days.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 320; originally revised from L. 1870, Ch. 291, tit. 8, sec. 6; sec. 7, as amended by L. 1878, Ch. 59.

Form of judgment. See *People ex rel. Cartmill v. Rochester*, 44 Hun, 166 (1887).

§ 340. Discontinuance of action.

If in an action brought by the village to recover a penalty for the violation of an ordinance, it appears from the complaint, or by the affidavit upon which an order of arrest is granted, that the person committing such violation is a disorderly person under this chapter, the magistrate may, upon the appearance of such person before him, by an order to be entered in his minutes, direct that all subsequent proceedings be taken in the same manner as if such person had been arrested without process as a disorderly person. Such subsequent proceedings shall be taken accordingly, and the action shall be thereupon discontinued.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 321; originally revised from L. 1870, Ch. 291, tit. 8, sec. 7, as amended by L. 1878, Ch. 59.

§ 341. Actions against the village.

No action shall be maintained against the village for damages for a personal injury or an injury to property alleged to have been sustained by reason of the negligence of the village or of any officer, agent or employee thereof, unless the same shall be commenced within one year after the cause of action therefor shall have accrued nor unless a written verified statement of the nature of the claim

and of the time and place at which such injury is alleged to have been received shall have been filed with the village clerk within sixty days after the cause of action shall have accrued. An action on such a claim shall not be commenced until the expiration of thirty days after it is presented.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 322, as amended by L. 1908, Ch. 300; originally revised from L. 1870, Ch. 291, tit. 3, sec. 9, as amended by L. 1880, Ch. 440.

Cross references. Security not required of village, see Code Civ. Pro., sec. 1990; presentation of claim to recover costs, see Code Civ. Pro., sec. 3245; general powers of board of trustees, see ante, sec. 89, subd. 21, notes; chief fiscal officer, see ante, sec. 81.

Purpose of notice. The notice is required not only to enable the village to prepare its defense and ascertain the facts, but also to adjust and settle the claim before suit and thus save the expense of litigation. *Butterfield v. State of New York* (1917), 178 App. Div. 292.

Condition precedent to action is presentation of claim to chief fiscal officer of village. *Judson v. Village of Olean*, 40 Hun, 158 (1886), rev'd on other grounds, 116 N. Y. 655; *Gage v. Village of Hornellsville*, 41 Hun, 87 (1886), aff'd 106 N. Y. 667; *Fisher v. Village of Cortland*, 42 Hun, 173 (1886); *Spaulding v. Village of Waverly*, 12 App. Div. 594 (1897).

Presentation of claim to board of trustees condition precedent and presentation to president and chamberlain is insufficient. *Mark v. Village of West Troy*, 69 Hun, 442; 23 N. Y. Supp. 422.

Failure to file will not be excused by the fact that the village has not been misled to its prejudice. *Reuber v. Village of Wellsville*, 83 App. Div. 581 (1903), 82 N. Y. Supp. 9.

A child five years of age is not precluded from bringing an action against a village for personal injuries by reason of a failure to file within the required time the notice specified in this section. A child of that age is not prejudiced by the failure of its father or mother to file the notice. *Murphy v. Village of Fort Edward*, 159 App. Div. 471.

Filing copy instead of original is not sufficient ground for a non-suit, where no objection was made by the village clerk, and the defendant was not misled or prejudiced. *Scheer v. Village of Perry*, 119 App. Div. 606 (1907), 103 N. Y. Supp. 1048.

Under charter provision requiring claim to be presented to "the president or board of trustees in writing" a service upon the clerk of the village, who was also clerk of the board of trustees, was sufficient, although not made at a meeting of the board. *Dobson v. Village of Oneida*, 106 App. Div. 377 (1905), 94 N. Y. Supp. 958; see *McIntee v. City of Middleton*, 80 App. Div. 434 (1903). (Service on president of council sufficient.)

A notice of a claim for damages against the village of Saratoga Springs should be filed under the provisions of the Laws of 1890, chapter 289, section 82, amending the charter of said village. It is not necessary to file a claim with the village clerk within sixty days of the accident, as provided by this section. *Vinson v. Sewer, Water and Street Commission*, 158 App. Div. 132.

Authority to present must be shown and the presentation must be in such a manner as will afford sufficient information to enable the officer to have the same audited and paid by the proper authority. *Spaulding v. Village of Waverly*, 12 App. Div. 594 (1897).

Presentation of claim to recover costs applies to actions ex delicto as well as actions ex contractu. *Judson v. Village of Olean*, 40 Hun, 158 (1886); see *Dressell v. City of Kingston*, 32 Hun, 526 (1884).

Reasonable degree of certainty in notice is required. *Forsyth v. City of Oswego*, 107 App. Div. 187 (1905); *Rauber v. Village of Wellsville*, 83 App. Div. 581 (1903); *Murphy v. Village of Seneca Falls*, 57 App. Div. 438 (1901); *Paddock v. City of Syracuse*, 61 Hun, 8 (1891); *Lee v. Village of Greenwich*, 48 App. Div. 391 (1900).

Time and place that the injury occurred should be definitely stated in the notice. *Freleigh v. Village of Saugerties*, 70 Hun, 593 (1893), 43 N. Y. Supp. 186; *Saunby v. City of Rochester*, 72 Hun, 489 (1893), 25 N. Y. Supp.

1136; *Werner v. City of Rochester*, 77 Hun, 33 (1894), 28 N. Y. Supp. 266; *Lee v. Village of Greenbush*, 48 App. Div. 391 (1900), 63 N. Y. Supp. 160; *Murphy v. Village of Seneca Falls*, 57 App. Div. 438 (1901), 67 N. Y. Supp. 1013; *Rauber v. Village of Wellsville*, 83 App. Div. 581 (1903), 82 N. Y. Supp. 9.

Notice must be definite, and one which does not describe the place where the accident occurred more definitely than to state that the plaintiff "was tripped up and fell into a hole in said sidewalk" of a designated street in said village is fatally defective. *Rauber v. Village of Wellsville*, 83 App. Div. 581 (1903), 82 N. Y. Supp. 9.

Locus of accident upon a designated street and between two cross streets is sufficient. *Romanowski v. City of Tonawanda*, 127 App. Div. 814 (1908), 112 N. Y. Supp. 105.

Notice is insufficient which fails to state the date when the injury occurred, and is indefinite as to the place of occurrence. *Forsyth v. City of Oswego*, 107 App. Div. 187 (1905).

Notice is insufficient which alleges the injury "on or about" a certain day. *Lee v. Village of Greenwich*, 48 App. Div. 391 (1900), 63 N. Y. Supp. 160.

Complaint may be amended to conform to the proof where the date of the accident as alleged therein is different from the date alleged in the notice of claim. *Ladrick v. Village of Green Island*, 103 App. Div. 71 (1906).

Action should not be commenced until the expiration of thirty days after the claim is presented. This is a condition precedent which must be pleaded and proved. *Thrall v. Cuba Village*, 88 App. Div. 410 (1903); see *Arthur v. Village of Glens Falls*, 66 Hun, 136 (1892), 21 N. Y. Supp. 81.

(Decided under former statute.)

Objection for failure to file notice of claim cannot be raised for the first time on appeal. *McCarthy v. Village of Far Rockaway*, 3 App. Div. 379 (1896), 38 N. Y. Supp. 989.

Notice of claim unnecessary in an equitable action to obtain relief from an alleged nuisance. *Gerow v. Village of Liberty*, 106 App. Div. 357 (1905), 94 N. Y. Supp. 949; *Sammons v. City of Gloversville*, 175 N. Y. 346 (1903), aff'g 67 App. Div. 628.

Notice must contain a description of the place where the accident happened. The provision as to filing of notice is prohibitive of a recovery until performance be shown. *Carson v. Village of Dresden* (1911), 202 N. Y. 414, rev'g 137 App. Div. 927.

Action for personal injury; notice; village created by special act. Under section 380 of the Village Law, the provisions of section 341 thereof, that no "action shall be maintained against the village for damages for a personal injury * * * sustained by reason of the negligence of the village or of any officer * * * thereof, unless the same shall be commenced within one year after the cause of action therefor shall have accrued, nor unless a written verified statement of the nature of the claim and of the time and place at which said injury is alleged to have been received, shall have been filed with the village clerk within sixty days," applies to a village created by special charter where no requirement as to notice is made therein, but the rule is not to be extended for the purpose of working injustice. *Haner v. Village of Owego* (1915), 165 App. Div. 734, 151 N. Y. Supp. 109.

§ 342. County court always open.

The county court is always open for the hearing of an application or appeal under this chapter.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 323.

This section was new in former Village Law.

§ 343. Location of hospitals and pest-houses.

A building or tent in a village shall not be used, occupied or maintained as a hospital or pest-house for the reception and care of public or private patients without the consent of the board of health of such village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 324; originally revised from L. 1893, Ch. 447.

§ 344. Destruction of garbage.

Within any village having over ten thousand inhabitants it shall be lawful for the trustees of such village to provide for the collection of and to cause to be consumed by fire or heat, and to prohibit the throwing, casting or deposit in any body or stream of water, or upon any ash heap or other place than such as may be provided by them within such village, any animal or vegetable refuse, dead animal, carrion, offal, swill or garbage. And it shall be lawful for the trustees of any such village to contract for the collection and for the consumption by heat or fire of any such refuse or other aforesaid matter, or for the purchase, maintenance and operation of any appliances for the collection and consumption thereof.

Derivation. L. 1894, Ch. 666, sec. 1.

§ 345. Violation of ordinance a misdemeanor.

Any person offending against any such provision as aforesaid made by any such trustees for the collection, or for the prohibition of the throwing, casting or deposit of any such refuse or other aforesaid matter shall be deemed guilty of a misdemeanor.

Derivation. L. 1894, Ch. 666, sec. 2.

Cross references. Violation of ordinances, see ante, sec. 93.

Where violation constitutes misdemeanor proceedings may be taken by indictment. *Cronin v. People*, 82 N. Y. 318 (1880), aff'g 20 Hun, 137.

§ 346. Expense, how assessed and collected.

Any expense incurred in any village, pursuant to the provisions of the last two sections, shall be annually raised as a part of the expenses of such village, and shall be levied, assessed and collected in the same manner that other expenses of such village are raised and shall be kept separate from the other funds of such village and shall be applied by the trustees thereof to the payment of such expense.

Derivation. L. 1894, Ch. 666, sec. 3, in part.

§ 347. Change of name.

The name of a village may be changed upon the adoption of a proposition therefor at an annual election. The proposition must contain the proposed new name, and be accompanied by the written consent of the postmaster-general of the United States to such

change. If the proposition be adopted a certificate thereof, attested by the president and clerk of the village shall, within ten days after the election, be filed in the office of such clerk, in the office of the county clerk of each county in which any part of the village is situated, and also in the office of the secretary of state. The change of name takes effect upon the filing of the certificate in the office of the village clerk.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 325; originally revised from L. 1870, Ch. 291, tit. 2, sec. 18, as added by L. 1893, Ch. 464.

Cross references. Certificate of change of name, see post, Form 58.

§ 348. Extension of boundaries.

Territory not in a city or village may be annexed to an adjoining village. A petition for such annexation, describing the territory, stating the number of inhabitants thereof, and signed by a majority of the persons residing therein, if any, qualified to vote for town officers, and also by the owners of a majority in value of the property therein, assessed upon the last preceding town assessment-roll, may be presented to the board of trustees of such village. Each person signing the petition shall state opposite his name the assessed valuation of the property, if any, owned by him in such territory. Such petition must be verified by at least three persons signing the same to the effect that the petitioners constitute a majority of the qualified electors, if any, of such territory, and that the petition represents a majority in value of the property as above described. The petition must also be acknowledged in the same manner as a deed to be recorded.

Such petition must be accompanied by the written consent of a majority of the town board of the town in which such territory is situated, residing outside the village. Upon the presentation of such petition and consent, the board of trustees shall cause a proposition for such annexation to be submitted at an annual or special election. If the proposition be adopted, the petition and consent and the certificate of the election shall be recorded in the village book of records. Such annexation takes effect upon the receipt by the village clerk of the certificate of the secretary of state under the seal of his office, certifying that he has received and placed on file in his office an outline map and description of the corporate limits of such village as extended, together with the date of filing the same in his office. Such outline map and description shall plainly show and describe the territory annexed. The date of filing such outline map and description, as shown by the certificate of the secretary of state, shall be deemed the date of the annexation of the territory to such village. And a certificate thereof containing a description of the territory annexed shall, within ten days after such election, be filed by the village clerk in the office of the clerk of the town and of the county in which such annexed territory is situated.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 326, as amended by L. 1907, Ch. 607; originally revised from L. 1870, Ch. 291, tit. 8, sec. 3, as amended by L. 1893, Ch. 503. Section 3 was amended by L. 1897, Ch. 332, but the amendatory act was only in effect until July 1, 1897, when it was repealed by the Village Law.

Amended by L. 1915, Ch. 257. In effect April 9, 1915.

Revisers' note (1897). L. 1870, Ch. 291, tit. VIII, sec. 33; R. S., 9th ed., 2314, rewritten. The provision of section 33, allowing the exclusion of the territory, is omitted.

Extension of boundaries; petition; description of boundaries. Where a citizen of an incorporated village petitions the trustees of the village to submit to the electors thereof, a proposition to extend the boundaries of the village, his right to have the petition granted depends upon whether the petition complies with the statute (Village Law, §§ 3, 348), which prescribes that the description of the territory to be incorporated shall "suitably" describe "such district with common certainty." Where such description leaves the exact boundaries doubtful and uncertain, the petition is defective and the petitioner may not compel the trustees to submit the proposition. *People ex rel. Underwood v. Village of Patchogue* (1916), 217 N. Y. 466, affg. 171 App. Div. 347, 156 N. Y. Supp. 1096.

A verification of such petition, as provided by section 526 of the Code of Civil Procedure, does not comply with section 348 of the Village Law, as amended, especially where the body of the petition does not allege the jurisdictional fact that its signers represented a majority in value of the property therein assessed upon the last preceding town assessment roll. *People ex rel. Underwood v. Trustees of Patchogue* (1916), 171 App. Div. 347, 156 N. Y. Supp. 1096, affd. 217 N. Y. 466.

§ 348-a. Extension of boundaries by the annexation of territory belonging to the village.

If a village be the owner of uninhabited territory adjoining the village such territory may be annexed to the village if a majority of the members of the town board of the town in which such village is situated residing outside of the village consent thereto. Such consent shall be acknowledged in the same manner as a deed to be recorded, and shall be filed in the office of the village clerk. Upon the filing of such consent the board of trustees of such village may adopt a resolution annexing such territory without the presentation of a petition and without the adoption of a proposition at a village election as provided by the last preceding section. Such annexation shall take effect at the same time and subject to the same conditions as if the adoption of such proposition by the board of trustees were the adoption at a special election of a proposition for annexation as provided in the last preceding section.

Derivation. Added by L. 1912, Ch. 124. In effect Apr. 4, 1912.

§ 349. Diminishing boundaries.

The boundaries of a village may be diminished by excluding from its corporate limits, territory abutting upon a street, which is not adjacent to nor benefited by either street or sidewalk improvements, electric lights, sewers, water works system or fire protection, when any of such benefits, improvements or system have been completed in a village. A petition for diminishing the boundaries of a village by excluding territory therefrom may be presented to the board of trustees of such village. Such petition shall describe the territory sought to be excluded, and shall state the number of inhabitants thereof and the names of the owners and occupants of each parcel of land therein, and shall be signed and duly acknowledged by the owners of a majority in value of the real property sought to be excluded. Each person signing such petition shall state opposite his name the assessed valuation of all property owned by him in such territory, together with the amount of village taxes paid thereon during the preceding year. Such statement of assessed valuation and taxes paid shall be duly verified by each person signing such petition. The petition must also be accompanied by the consent in writing of the supervisor of the town in which the territory sought to be excluded is situated. Upon the presentation of such petition and consent, the board of trustees shall, if it appears that the exclusion of such territory will not decrease the number of inhabitants re-

maining in the village so as to change its class, cause a proposition for so diminishing such boundaries to be submitted at the next succeeding annual village election, or a special election called for the purpose of voting upon such proposition. If the proposition be adopted, the petition, consent and certificate of the result of the vote cast upon the proposition shall be recorded in the village book of records. The diminishing of such boundaries shall take effect thirty days after such election. Within ten days after the adoption of such proposition, a certificate containing a description of the territory sought to be excluded, stating the assessed valuation thereof and the number of inhabitants therein, shall be filed in the town clerk's office of each town, and in the county clerk's office of each county in which the village is wholly or partly situated, and also in the office of the secretary of state. Territory so excluded from the village shall not be relieved from bearing its proportionate share of any liability or indebtedness incurred by such village while such territory was a part thereof, and until such liability is discharged, or such indebtedness paid, the proportionate share to which such territory would be liable if it had not been excluded shall be levied upon, assessed and collected from such territory by the proper officers of such village, in the same manner as if such territory had not been excluded therefrom. Provided however that this section shall not apply to any county in the state which has adopted, or may hereafter adopt, the system of highway improvement under chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight or the acts amendatory thereof.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 326a, as amended by L. 1903, Ch. 606.

Under this section it seems that a village has no authority to diminish its boundaries, if the county in which it is situate has adopted the system of highway improvement authorized by L. 1898, chap. 115, although the purpose of the change of boundaries be to withdraw from a union free school district and create a distinct school district. *Union Free School District of Brownville v. Village of Glen Park*, 109 App. Div. 414 (1905), 96 N. Y. Supp. 423.

§ 350. Dissolution of villages.

A proposition for the dissolution of a village may be submitted at a special election. If the proposition be defeated a second proposition for that purpose shall not be submitted within two

cess all the powers, enjoy all the privileges, and be subject to all the liabilities, in all respects and for all purposes, as if it had been originally incorporated under this chapter; and from the date of the consolidation it shall belong to the class in which it would have been placed if the consolidation had taken effect immediately before the last preceding enumeration of the inhabitants of the several consolidating villages under this chapter, according to the aggregate returns of such enumeration on file at the date of the consolidation. Such new village shall become the owner of all the property of each of the consolidating villages, shall succeed to every right of action existing in favor of either of them, and shall become liable for all causes of action, debts or obligations against either of such consolidating villages, and the same may be enforced as if such liability, debt or obligation had been originally incurred by it. Such consolidation shall not affect any action or proceeding then pending against either of the consolidating villages, but such action or proceeding may be prosecuted to final judgment as if such consolidation had not taken place, except that the court in which such action or proceeding is pending shall, upon application of the board of trustees of the new village, substitute it as a party to the action or proceeding, and in either case the judgment or order shall be enforceable in favor of or against the new village.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 331, as amended by L. 1899, Ch. 58.

§ 355. Number of trustees; wards; clerk.

Within five days after the consolidation takes effect the boards of trustees of the consolidating villages shall meet in joint session and determine, within the limitations prescribed by section forty-four, the number of trustees to be elected in the new village at the first election, and if such new village is a village of the first class, may also divide such village into wards of a number equal to one-half of the number of trustees to be elected. Such wards shall contain a population as nearly equal as may be, and be of convenient and contiguous territory, in as compact form as practicable. They shall make a certificate of such division which shall contain a description of each ward, and file the same in the office of the village clerk, who shall at least fifteen days before

such first election post copies thereof in at least ten conspicuous public places in such village and publish a copy thereof at least once in each newspaper printed in the new village. They shall also at such joint meeting appoint a clerk of the new village, who shall hold his office until his successor is appointed.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 332, as added by L. 1899, Ch. 56.

§ 356. First election in consolidated village.

At their joint meeting, the boards of trustees of the consolidating villages shall fix the date of the first election, which must be held within twenty days after the joint meeting, except that if the election on the question of consolidation is held in the month of January, such first election must be held on the day of the next annual election under this chapter. They shall provide for giving notice of such election as in case of an annual election under this chapter. If such village is not divided into wards, the first election shall be held in the consolidating villages by election districts or otherwise as if such consolidation has not taken place. If such village is divided into wards, each ward shall constitute an election district for the first election and the boards of trustees of the consolidating villages at their joint meeting shall appoint two inspectors of election, a poll clerk and a ballot clerk for each ward to conduct such election therein. Such inspectors shall not both be chosen from the same political party. Section twenty-nine of this chapter applies, so far as practicable, to the first election in the new village, except that if an election is held after the thirtieth day of September and on or before the date fixed for the next annual election, one-half of the number of trustees elected shall hold office until the end of the next official year, and one-half during the next two official years. If such village is divided into wards, two trustees shall be elected in each ward, and if the election is held after the thirtieth day of September and on or before the date fixed for the next annual election, one of such trustees shall be elected to hold office until the end of the next official year, and one to hold office during the next two official years. Section fifty-six of this chapter applies, so far as practicable, and the joint boards of trustees shall constitute the canvassing board at such first election. The certificate of

such first election shall be filed with the clerk of the new village on the day of canvass, and thereupon the terms of office of the officers of the consolidating villages shall expire and the terms of officers elected for the new village shall commence.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 384, as amended by L. 1899, Ch. 56.

§ 357. Transfer of property to new village.

Within five days after the qualification of the officers of the new village, the officers of the consolidating villages shall deliver to the proper officers thereof all money, records, books, papers or other property belonging to the village in their possession or under their control, and such new village shall thereupon become the owner thereof and its proper officers shall be the custodians thereof as prescribed by this chapter.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 334, as added by L. 1899, Ch. 56.

§ 358. Reports of treasurers.

The treasurer of each of such consolidating villages shall, immediately on the termination of his office, file with the clerk of the new village an accurate, detailed and verified statement, showing all moneys paid into the treasury of his village during the current fiscal year, the persons by whom, and the funds for which the same were paid, all expenditures from the treasury during such period, the persons to whom, and the funds from which such moneys were paid, the balance in the treasury to the credit of each fund at the time of making such report, and all indebtedness of the village outstanding, to whom, so far as practicable the same is owing, upon what account, and when payable.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 335, as added by L. 1899, Ch. 56.

§ 359. Establishment of disputed, unknown or uncertain boundaries.

If the boundary lines, or any of the boundary lines, of any incorporated village organized or existing pursuant to general or special act, or whose incorporation is lawfully established, are uncertain or there is a reasonable doubt as to their exact location, for any reason, or if, in the statute or records by which the village was incorporated a boundary line or lines was not completed, leaving a hiatus therein, or if the records and papers showing the boundaries of a village incorporated under a general act are lost or cannot be identified, such boundary line or lines may be settled and established in the following manner: An application in writing, subscribed by the president of the village, requesting the establishment of such boundaries, may be presented to the board of supervisors of the county in which the village is located. It shall then be the duty of such board of supervisors to take action upon the application by resolution, at such time, within sixty days thereafter, as it may determine; but the board shall not adopt any resolution determining or defining such boundary line or lines until after a public hearing is had thereon, before the board, upon a notice to be published for three consecutive weeks next preceding the meeting of the board at which the matter is to be heard, in a newspaper published in the village, and if there be a newspaper published in the town outside of the village, in one such newspaper also. A copy of the notice shall also be served personally, at least fifteen days before the meeting of such board, on the supervisor and town clerk of the town or each of the towns in which the village is located. The board shall give a hearing to all persons appearing in support of or in opposition to the adoption of such resolution or presenting statutes, records, documents or other facts affecting the boundaries of such village. The board may take proof and testimony relating to the subject-matter of such investigation. The board may adopt a resolution determining and defining the boundary lines of the village, to include both the known and undisputed lines as well as those which are uncertain or unknown as aforesaid. A copy of the resolution, as adopted by the board, shall contain the courses, distances and fixed monuments necessary for an accurate description thereof, and a copy of such resolution duly certified by the clerk of the board, together with a map or survey of such boundaries as fixed by the board, shall be filed in the office of the secretary of state within thirty days after the adoption of the resolution. The filing of such map shall be

equivalent to a compliance with the provisions of section eighty of this chapter; but where a map shall not have been filed pursuant to the requirements of such section on account of the boundary lines of a village being uncertain or unknown, as provided in this section, proceedings for the establishment and settlement thereof shall be begun by the president of the village under the provisions of this section within three months after this section takes effect. The boundary lines shall be those fixed by the resolution, but this section shall not be deemed to authorize the inclusion within a village of any substantial area of territory which has not been either (1) commonly recognized as a part of the village or (2) treated and claimed by the village authorities, at some time previously, as a part of the village or, (3) the subject of a reasonable dispute, on a question of law or fact, as to its location within or without the village. The expenses of making any map or survey accompanying the filing of such resolution, by whomsoever incurred, or in the production of papers, documents or statutes at the hearing relating to such boundary lines, shall be borne by the village and the payment thereof provided for by taxation in the village as other village expenses.

Derivation. Added by L. 1912, Ch. 123. In effect Apr. 3, 1913.

ARTICLE XVI.

EFFECT OF CHAPTER.

Section 380. Effect of chapter on special villages.

381. Effect of revision on general villages.

§ 380. Effect of chapter on special villages.

A village incorporated under and subject to a special law, and each officer thereof, possesses all the powers and is subject to all the liabilities and responsibilities conferred or imposed upon a village incorporated under this chapter, or upon an officer thereof, not inconsistent with such special law.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 340; originally revised from L. 1884, Ch. 308.

Village incorporated in 1837, by a special act, is still an existing corporation, although it has never elected officers. Rept. of Atty.-Gen. (1899), 314.

This section has been held to make the provisions of sec. 128 applicable to the Village of Port Chester. *Wakefield v. Perkins*, 120 N. Y. Supp. 635 (1910).

§ 381. Effect of revision on general villages.

The following villages are subject to the provisions of this chapter, as if incorporated thereunder:

1. Villages incorporated under chapter four hundred and twenty-six of the laws of eighteen hundred and forty-seven, or the acts amendatory thereof and supplemental thereto, and which have not been reincorporated under a special law.

2. Villages incorporated or reincorporated under chapter two hundred and ninety-one of the laws of eighteen hundred and seventy, or the acts amendatory thereof and supplemental thereto.

3. Villages incorporated under chapter four hundred and fourteen of the laws of eighteen hundred and ninety-seven, or the acts amendatory thereof and supplemental thereto.

4. Villages incorporated by special law and reincorporated under a general law and now subject to its provisions.

Derivation. Former Village Laws (L. 1897, Ch. 414), sec. 341.

This section was new in former Village Laws.

Consolidator's note (1909). New matter added to make villages incorporated under present law subject to this chapter.

ARTICLE XVII.

LAWS REPEALED: WHEN TO TAKE EFFECT.

Section 390. Laws repealed.

391. When to take effect.

§ 390. Laws repealed.

Of the laws enumerated in the schedule hereto annexed that portion specified in the last column is hereby repealed.

Thus amended by L. 1909, Ch. 240, sec. 83, in effect April 22, 1909.

§ 391. When to take effect.

This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

Laws of	Chapter	Section
1847.....	151.....	All.
1847.....	209.....	All.
1847.....	426.....	All.
1850.....	176.....	All.
1851.....	519.....	All.
1852.....	184.....	All.
1857.....	552.....	All.
1861.....	178.....	All.
1861.....	178.....	All.
1864.....	117.....	All.
1868.....	462.....	All.
1870.....	291.....	All.
1870.....	311.....	Part relating to division of streets on boundary line between villages and other municipal corporations.
1871.....	688.....	All.
1871.....	696.....	All.
1871.....	870.....	All.
1872.....	357.....	All.
1872.....	696.....	All.
1873.....	92.....	All.
1873.....	397.....	11.

Laws of	Chapter	Section
1874.....	78.....	All.
1874.....	345.....	All.
1874.....	474.....	All.
1874.....	628.....	All.
1875.....	149.....	All.
1875.....	181.....	All.
1875.....	197.....	All.
1875.....	242.....	All.
1875.....	339.....	All.
1875.....	385.....	All.
1875.....	514.....	All.
1875.....	570.....	All.
1876.....	92.....	All.
1876.....	134.....	All.
1876.....	308.....	All.
1876.....	317.....	All.
1877.....	16.....	All.
1877.....	244.....	All.
1878.....	59.....	All.
1878.....	249.....	All.
1878.....	281.....	All.
1878.....	396.....	All.
1879.....	68.....	All.
1879.....	86.....	All.
1879.....	129.....	All.
1879.....	228.....	All.
1879.....	250.....	All.
1879.....	337.....	All.
1880.....	64.....	All.
1880.....	78.....	All.
1880.....	144.....	All.
1880.....	172.....	All.
1880.....	235.....	All.
1880.....	292.....	All.
1880.....	302.....	All.
1880.....	422.....	All.
1880.....	496.....	All.
1881.....	17.....	All.

Laws of	Chapter	Section
1881.....	175.....	ALL.
1881.....	249.....	ALL.
1881.....	353.....	ALL.
1881.....	387.....	ALL.
1881.....	408.....	ALL.
1881.....	615.....	ALL.
1881.....	415.....	46.
1881.....	615.....	ALL.
1881.....	690.....	ALL.
1882.....	226.....	ALL.
1882.....	305.....	ALL.
1882.....	316.....	ALL.
1883.....	90.....	ALL.
1883.....	113.....	ALL.
1883.....	118.....	ALL.
1883.....	153.....	ALL.
1883.....	255.....	ALL.
1883.....	459.....	ALL.
1883.....	465.....	ALL.
1884.....	129.....	ALL.
1884.....	131.....	ALL.
1884.....	281.....	ALL.
1884.....	308.....	ALL.
1884.....	423.....	ALL.
1885.....	170.....	ALL.
1885.....	192.....	ALL.
1885.....	211.....	ALL.
1885.....	236.....	ALL.
1885.....	450.....	ALL.
1886.....	497.....	ALL.
1886.....	556.....	ALL.
1886.....	600.....	ALL.
1886.....	616.....	ALL.
1887.....	68.....	ALL.
1887.....	244.....	ALL.
1887.....	504.....	ALL.
1887.....	513.....	ALL.
1887.....	514.....	ALL.

Laws of	Chapter	Section
1888.....	172.....	All.
1888.....	342.....	All.
1888.....	452.....	All.
1888.....	525.....	All.
1889.....	174.....	All.
1889.....	186.....	All.
1889.....	229.....	All.
1889.....	246.....	All.
1889.....	375.....	All.
1889.....	440.....	All.
1889.....	455.....	All.
1889.....	507.....	All.
1890.....	82.....	All.
1890.....	196.....	All.
1890.....	213.....	All.
1890.....	235.....	All.
1890.....	236.....	All.
1890.....	371.....	All.
1890.....	527.....	All.
1890.....	542.....	All.
1891.....	74.....	All.
1891.....	116.....	All.
1891.....	139.....	All.
1891.....	160.....	All.
1891.....	201.....	All.
1891.....	306.....	All.
1891.....	312.....	All.
1891.....	316.....	All.
1892.....	194.....	All.
1892.....	195.....	All.
1892.....	222.....	All.
1892.....	349.....	All.
1892.....	564.....	All.
1892.....	593.....	All.
1892.....	640.....	All.
1893.....	212.....	All.
1893.....	400.....	All.
1893.....	422.....	All.

Laws of	Chapter	Section
1893.....	447.....	All.
1893.....	464.....	All.
1893.....	473.....	All.
1893.....	503.....	All.
1893.....	617.....	All.
1893.....	618.....	All.
1893.....	624.....	All.
1893.....	662.....	All.
1893.....	694.....	All.
1894.....	161.....	All.
1894.....	172.....	All.
1894.....	284.....	All.
1894.....	318.....	All.
1894.....	413.....	All.
1894.....	666.....	Part relating to villages.
1894.....	673.....	All.
1894.....	680.....	All.
1895.....	113.....	All.
1895.....	146.....	All.
1895.....	154.....	All.
1895.....	187.....	All.
1895.....	202.....	All.
1895.....	388.....	All.
1895.....	430.....	All.
1895.....	437.....	All.
1895.....	743.....	All.
1895.....	879.....	All.
1896.....	166.....	All.
1896.....	209.....	All.
1896.....	243.....	All.
1896.....	310.....	All.
1896.....	341.....	All.
1896.....	329.....	All.
1896.....	409.....	All.
1896.....	457.....	All.
1896.....	458.....	All.
1896.....	522.....	All.
1896.....	663.....	All.
1896.....	688.....	All.

Laws of	Chapter	Section
1896.....	923.....	All.
1896.....	978.....	All.
1897.....	332.....	All.
1897.....	414.....	All.
1898.....	145.....	All.
1898.....	195.....	All.
1898.....	365.....	All.
1898.....	539.....	All.
1898.....	668.....	All.
1899.....	56.....	All.
1899.....	82.....	All.
1899.....	154.....	All.
1899.....	217.....	All.
1899.....	326.....	All.
1899.....	391.....	All.
1899.....	446.....	All.
1900.....	373.....	All.
1901.....	7.....	All.
1901.....	50.....	All.
1901.....	53.....	All.
1901.....	68.....	All.
1901.....	155.....	All.
1901.....	509.....	All.
1901.....	593.....	All.
1901.....	624.....	All.
1902.....	280.....	All.
1902.....	520.....	All.
1902.....	591.....	All.
1903.....	131.....	All.
1903.....	139.....	All.
1903.....	202.....	All.
1903.....	313.....	All.
1903.....	606.....	All.
1903.....	617.....	All.
1904.....	34.....	All.
1904.....	35.....	All.
1904.....	100.....	All.
1904.....	101.....	All.
1904.....	122.....	All.

Laws of	Chapter	Section
1904.....	193.....	All
1904.....	231.....	All
1904.....	497.....	All
1904.....	645.....	All
1904.....	680.....	All
1905.....	66.....	All
1905.....	98.....	All
1905.....	220.....	All
1905.....	259.....	All
1905.....	290.....	All
1905.....	300.....	All
1905.....	404.....	All
1905.....	498.....	All
1905.....	500.....	All
1906.....	34.....	All
1906.....	57.....	All
1906.....	97.....	All
1906.....	278.....	All
1906.....	397.....	All
1906.....	404.....	All
1906.....	452.....	All
1906.....	577.....	All
1906.....	602.....	All
1907.....	38.....	All
1907.....	44.....	All
1907.....	59.....	All
1907.....	82.....	All
1907.....	93.....	All
1907.....	158.....	All
1907.....	471.....	All
1907.....	607.....	All
1908.....	100.....	All
1908.....	176.....	All
1908.....	300.....	All
1908.....	301.....	All
1908.....	302.....	All
1908.....	461.....	All
1908.....	509.....	All

Code Criminal Procedure, §§ 75-755.

Consolidator's notes to schedule of repeals. Where a statute has been specifically repealed, that and the repealing statute are given without explanatory note.

L. 1851, Ch. 519. Act amending L. 1847, Ch. 426. Section 2 was repealed by L. 1897, Ch. 414, sec. 342. Section 1 is a repealing section. Balance of act is obsolete.

As the statutes covered by express repealing acts have been repealed by the Consolidated Laws, the repealing statutes have been recommended for repeal.

L. 1880, Ch. 302. Authorize cities and incorporated villages to charge license fees to persons doing a retail business on the canals of this state. Substance of this act is contained in "old" General City Law, sec. 8, and Village Law, sec. 90, subd. 2; sec. 91, subd. 2, this law. Superseded and obsolete.

L. 1883, Ch. 113, and amendatory acts. Part relating to change of grade of streets and bridges by village authorities repealed by L. 1897, Ch. 414, sec. 342, subd. 4. Balance of act consolidated in Highway Law.

L. 1894, Ch. 666. Part of statute relating to villages. Consolidated in Village Law, secs. 344-346. Remainder of statute consolidated in Town Law.

L. 1897, Ch. 414, sec. 342. This section has been omitted for the following reasons:

Subd. 1. The acts covered by this subdivision are contained in the schedule of repeals annexed to the Village Law. Section 390 is the uniform repealing clause adopted in the consolidated laws.

Subd. 2. Inconsistent repeals have been accomplished and all such clauses have been omitted from the consolidated laws.

Subd. 3. The repeals under this subdivision have been accomplished and the subdivision is of no further value.

Subd. 4. L. 1883, Ch. 113, is repealed in the schedule.

Subd. 5. The portion of L. 1870, Ch. 311, referred to in this subdivision has been included in the schedule of repeals.

L. 1897, Ch. 414. This statute, which is the "old" Village Law, is recommended for repeal because its live provisions have been incorporated in the Village Law, except secs. 46-48, 72, which provided for readjustment of affairs of villages at time Village Law took effect. Temporary and obsolete.

L. 1898, Ch. 145. Consolidated in Village Law, sec. 205.

L. 1898, Ch. 539. " " " " " 113.

L. 1898, Ch. 668. " " " " " 65.

L. 1899, Ch. 56. Section 1, part adding sec. 329 to L. 1897, Ch. 414, amended to read as follows by L. 1902, Ch. 520, sec. 1. Balance of section consolidated in Village Law, secs. 353-358. Section 2 states when act shall take effect.

L. 1899, Ch. 82. Consolidated in Village Law, sec. 234.

L. 1899, Ch. 217. " " " " " 338.

L. 1899, Ch. 391. " " " " " 90, subd. 28.

L. 1901, Ch. 7. " " " " " 44.

L. 1901, Ch. 50. " " " " " 89, subd. 23.

L. 1901, Ch. 53. " " " " " 350.

L. 1901, Ch. 68. " " " " " 159.

L. 1901, Ch. 155. " " " " " 43.

L. 1901, Ch. 509. Section 1 amended to read as follows by L. 1906, Ch. 404, sec. 2. Balance of act disposed of in Town Law.

L. 1901, Ch. 593. Consolidated in Village Law, sec. 89, subd. 24.

L. 1901, Ch. 624. " " " " " 171-174.

L. 1902, Ch. 520. " " " " " 352.

L. 1902, Ch. 591. " " " " " 230.

L. 1903, Ch. 131. " " " " " 224.

L. 1903, Ch. 139. Sections 1, 2 amended to read as follows by L. 1904, Ch. 35, sec. 2, 3. Section 3 consolidated in Village Law, sec. 6. Section 4 states when act shall take effect.

L. 1903, Ch. 606. Consolidated in Village Law, sec. 349.

L. 1904, Ch. 34. " " " " " 120.

L. 1904, Ch. 35. " " " " " 2, 3, 5.

L. 1904, Ch. 100. Section 1 consolidated in Village Law, sec. 51. Sec. 2, part amending L. 1897, Ch. 414, sec. 55, amended to read as follows by L. 1904, Ch. 231, sec. 1. Balance of sec. 2 consolidated in Village Law, sec. 55. Section 3 states when act shall take effect.

L. 1904, Ch. 101. Consolidated in Village Law, sec. 133.

L. 1904, Ch. 122. " " " " " 162.

L. 1904, Ch. 183. " " " " " 89, subd. 15, sec. 122.

L. 1904, Ch. 497. " " " " " 165.

L. 1904, Ch. 645. " " " " " 206.

L. 1904, Ch. 680. " " " " " 130.

L. 1905, Ch. 66. " " " " " 64.

L. 1905, Ch. 98. " " " " " 161.

L. 1905, Ch. 220. " " " " " 202.

L. 1905, Ch. 259. " " " " " 205.

L. 1905, Ch. 290. " " " " " 46, 52.

L. 1905, Ch. 300. " " " " " 104.

L. 1905, Ch. 404. " " " " " 25.

L. 1905, Ch. 498. " " " " " 103.

L. 1905, Ch. 500. " " " " " 89, subd. 25.

L. 1906, Ch. 34. Section 1, part adding sec. 339-g to L. 1897, Ch. 414, amended to read as follows by L. 1907, Ch. 38, sec. 1. Balance of section consolidated in Village Law, secs. 310-315, 317-321. Section 2 states when act shall take effect.

L. 1906, Ch. 57. Consolidated in Village Law, sec. 56.

L. 1906, Ch. 278. " " " " " 280.

L. 1906, Ch. 397. " " " " " 83.

L. 1906, Ch. 404. " " " " " 12, 41.

L. 1906, Ch. 452. " " " " " 42.

L. 1906, Ch. 577. " " " " " 90, subd. 9.

L. 1906, Ch. 602. Section 1 is a repealing section. Section 2 consolidated in Village Law, sec. 40. Section 3 states when act shall take effect.

L. 1907, Ch. 38. Consolidated in Village Law, sec. 316.

L. 1907, Ch. 44. " " " " " 166.

L. 1907, Ch. 59. " " " " " 128, subd. 12.

L. 1907, Ch. 82. " " " " " 48.

L. 1907, Ch. 93. " " " " " 170.

L. 1907, Ch. 158. " " " " " 105.

L. 1907, Ch. 471. " " " " " 189, 190.

L. 1907, Ch. 607. " " " " " 21, 348.

REPORT OF COMMISSIONERS OF STATUTORY REVISION IN RELATION TO VILLAGES.

(Submitted Feb. 22, 1897.)

To the Legislature:

The Statutory Revision Commission, in connection with the proposed revision of the village laws, deemed it important to obtain, if possible, an accurate list of the villages of the State, showing the dates of their incorporation, under what laws incorporated, namely, whether under special act, the general act of 1847, or under the general act of 1870, and also their estimated population. While the proposed revision embraces, nominally, the general act of 1870, and subsequent general laws, we have included in the scheme all villages incorporated under the general law of 1847, which, by the terms of the new law, will become subject to its provisions. We find that a large number of villages, incorporated under special law and also under the general law of 1847, have reincorporated under the general law of 1870. We have used all available means to make this list accurate in all respects. The population stated in the accompanying table is only an estimate, furnished, in most cases, by an officer of the village. In some instances the population is stated according to the Federal census of 1890. There seems never to have been a separate enumeration of the population of villages under a State census. The pending bill provides for an enumeration in each village in January, 1898, and in the same month in every fourth year thereafter, so that if this bill becomes a law, the population of villages can thereafter be readily ascertained. This suggestion is made principally in view of the classification of villages proposed by the bill, based upon population, and this classification cannot be complete until after the first enumeration. The pending bill also provides that hereafter a record shall be kept in the office of the Secretary of State of villages incorporated, extended or dissolved. The annexed list of villages is divided into three classes, showing, first, villages now under the law of 1870, which includes not only those incorporated under that law, but also villages incorporated under any other law which have become subject to its provisions; second, villages incorporated and now governed by special law; and, third, villages now under the general law of 1847.

List of incorporated villages in the State, prepared by the Statutory Revision Commission, February, 1897:

I.—LIST OF VILLAGES UNDER GENERAL ACT OF 1870.

Village	County.	Estimated population.	When incorporated.
Adams	Jefferson	1,400	1851
Afton	Chenango	800	1891
Akron	Erie	1,800	1850
Alden	Erie	600	1869
Alexandria Bay	Jefferson	1,300	1878
Alfred	Allegany	800	1887
Altamont	Albany	800	1890
Altmar	Oswego	670	1876

Village.	County.	Estimated population.	When incorporated.
Amityville	Suffolk	2,000	1894
Andes	Delaware	450	1863
Andover	Allegany	1,000	1890
Angola	Erie	750	1873
Arcade	Wyoming	1,000	1871
Ardaley	Westchester	350	1896
Arverne	Queens	2,000	1896
Athens	Greene	2,000	1805
Avoca	Steuben	1,200	1883
Babylon	Suffolk	2,500	1894
Ballston Spa	Saratoga	5,000	1865
Belleville	Jefferson	375	1860
Belmont	Allegany	1,200	1873
Bergen	Genesee	700	1877
Black River	Jefferson	1,000	1891
Bolivar	Allegany	1,150	1883
Boonville	Oneida	1,800	1855
Brewster	Putnam	1,150	1894
Bridgewater	Oneida	400	1825
Brighton	Monroe	700	1885
Brockport	Monroe	3,700	1829
Brocton	Chautauqua	1,000	1894
Caledonia	Livingston	1,000	1891
Camillus	Onondaga	600	1852
Canajoharie	Montgomery	3,000	1829
Canaseraga	Allegany	700	1892
Canastota	Madison	2,800	1850
Canistota	Steuben	2,400	1873
Cape Vincent	Jefferson	1,600	1871
Castile	Wyoming	1,100	1877
Cattaraugus	Cattaraugus	1,400	1882
Castleton	Rensselaer	1,500	1827
Cato	Cayuga	500	1880
Cazenovia	Madison	2,000	1810
Celoron	Chautauqua	500	1896
Central Square	Oswego	550	1889
Champlain	Clinton	1,400	1873
Charlotte	Monroe	900	1869
Chaumont	Jefferson	800	1874
Chittenango	Madison	800	1842
Cherry Creek	Chautauqua	800	1893
Chester	Orange	1,800	1893
Clayville	Oneida	1,000	1887
Clayton	Jefferson	2,000	1872
Cohocton	Steuben	1,100	1891
Cold Spring	Putnam	2,500	1846
Constableville	Lewis	550	1885
Copenhagen	Lewis	800	1869
Corinth	Saratoga	3,000	1885

Village.	County.	Estimated population.	When incorporated.
Cornwall	Orange	2,500	1884
Coxsackie	Greene	2,800	1867
Cuba	Allegany	1,300	1870
Depew	Erie	3,000	1894
De Ruyter	Madison	800	1833
Dobbs Ferry	Westchester	2,800	1873
Dolgeville	Herkimer	2,500	1891
Dresden	Yates	300	1867
Dundee	Yates	1,450	1847
Earlville	Chenango and Madison	1,000	1887
East Aurora	Erie	2,000	1849
East Randolph	Cattaraugus	900	1886
East Syracuse	Onondaga	3,150	1881
Eastwood	Onondaga	475	1894
Elba	Genesee	500	1884
Elizabethtown	Essex	600	1875
Ellicottville	Cattaraugus	900	1837
Ellisburg	Jefferson	300	1895
Elmira Heights	Chemung	2,500	1896
Elwood	Onondaga	1,000	1891
Fabius	Onondaga	425	1886
Fairhaven	Cayuga	800	1880
Falconer	Chautauqua	1,000	1891
Farnham	Erie	325	1893
Far Rockaway	Queens	2,800	1889
Fayetteville	Onondaga	1,500	1840
Fishkill Landing	Dutchess	5,000	1864
Fonda	Montgomery	1,200	1850
Fort Ann	Washington	450	1820
Fort Covington	Franklin	1,200	1889
Fort Edward	Washington	5,000	1847
Fort Plain	Montgomery	3,000	1878
Frankfort	Herkimer	3,000	1863
Franklin	Delaware	800	1836
Franklinville	Cattaraugus	1,300	1874
Freeport	Queens	2,500	1892
Freeville	Tompkins	300	1887
Fultonville	Montgomery	1,100	1886
Gilbertsville	Otsego	500	1896
Glens Falls	Warren	13,000	1839
Goshen	Orange	3,000	1870
Gowanda	Cattaraugus and Erie	2,200	1850
Granville	Washington	3,500	1885
Greene	Chenango	1,200	1842
Greenepoint	Suffolk	3,200	1894
Greenwich	Washington	2,500	1809
Groton	Tompkins	2,000	1860
Hagamans	Montgomery	750	1892
Hamburg	Erie	1,800	1874

Village.	County.	Estimated population.	When incorporated.
Hammondsport	Steuben	1,200	1856
Hancock	Delaware	1,500	1888
Hannibal	Oswego	550	1890
Harrisville	Lewis	750	1892
Hastings-on-Hudson	Westchester	1,800	1879
Haverstraw	Rockland	5,000	1854
Hempstead	Queens	5,000	1853
Henderson	Jefferson	430	1886
Herkimer	Herkimer	5,000	1807
Heron	St. Lawrence	500	1877
Hillburn	Rockland	950	1893
Hilton	Monroe	800	1885
Hobart	Delaware	800	1888
Holley	Orleans	1,500	1867
Holland Patent	Oneida	500	1885
Hunter	Greene	450	1894
Irrington	Westchester	2,500	1872
Keeseville	Clinton and Essex.....	2,300	1878
Lacona	Oswego	300	1890
Lakewood	Chautauqua	600	1893
Larchmont	Westchester	1,500	1891
Lestcrshire	Broome	2,000	1892
Liberty	Sullivan	1,200	1870
Limestone	Cattaraugus	900	1877
Little Valley	Cattaraugus	1,200	1876
Liverpool	Onondaga	1,300	1830
Livonia	Livingston	1,000	1882
Lowville	Lewis	3,500	1854
Macedon	Wayne	600	1857
Madison	Madison	350	1816
Mamaroneck	Westchester	3,500	1895
Mannsville	Jefferson	400	1879
Manchester	Ontario	800	1892
Manlius	Onondaga	1,100	1842
Margaretville	Delaware	850	1875
Marathon	Cortland	1,200	1861
Marcellus	Onondaga	600	1846
Massena	St. Lawrence	1,200	1887
Matteawan	Dutchess	6,000	1886
Mayfield	Fulton	700	1896
Meridan	Cayuga	400	1854
Mexico	Oswego	1,350	1851
Middleburgh	Schoharie	1,200	1881
Middleville	Herkimer	650	1890
Middleport	Niagara	1,400	1859
Millbrook	Dutchess	800	1895
Millford	Otsego	900	1890
Millerton	Dutchess	1,100	1875
Monroe	Orange	900	1894

Village.	County.	Estimated population.	When incorpor- ated.
Morris	Otsego	600	1870
Morristown	St. Lawrence	475	1884
Morrisville	Madison	750	1848
Mount Kisco	Westchester	1,500	1875
Naples	Ontario	1,200	1894
Nelliston	Montgomery	800	1878
Newfield	Tompkins	350	1895
New Palms	Ulster	1,000	1887
Newark Valley	Tioga	850	1894
Newport	Herkimer	900	1857
North Olean	Cattaraugus	1,500	1894
North Pelham	Westchester	800	1896
Northport	Suffolk	2,500	1894
North Tarrytown	Westchester	4,000	1874
North Tonawanda	Niagara	10,000	1874
Northville	Fulton	1,100	1873
Norwood	St. Lawrence	1,600	1871
Nyack	Rockland	4,500	1883
Oakfield	Genesee	650	1858
Oneida Castle	Oneida	320	1841
Oriskany Falls	Oneida	1,000	1890
Ovid	Seneca	700	1852
Oxford	Chenango	1,600	1808
Painted Post	Steuben	900	1893
Parish	Oswego	550	1883
Patchogue	Suffolk	3,500	1893
Pawling	Dutchess	800	1893
Pelham Manor	Westchester	450	1891
Phelps	Ontario	1,400	1855
Philadelphia	Jefferson	1,200	1872
Philmont	Columbia	2,000	1882
Piermont	Rockland	1,200	1847
Pike	Wyoming	600	1848
Pine Hill	Ulster	600	1895
Poland	Herkimer	450	1890
Port Dickinson	Broome	500	1876
Port Henry	Essex	2,500	1869
Port Leyden	Lewis	850	1870
Portville	Cattaraugus	800	1895
Potadam	St. Lawrence	4,000	1831
Prattsburgh	Steuben	700	1848
Prattsville	Greene	600	1883
Prospect	Oneida	350	1890
Pulaski	Oswego	1,800	1858
Randolph	Cattaraugus	1,300	1867
Red Hook	Dutchess	1,000	1894
Remsen	Oneida	500	1845
Richburg	Allegany	500	1881
Richmond Hill	Queens	2,700	1894

Village.	County.	Estimated population.	When incorporated.
Richmondville	Schoharie	800	1881
Richville	St. Lawrence	500	1880
Rockton	Montgomery	900	1892
Rockville Center	Queens	2,000	1870
Rosendale	Ulster	1,600	1890
Rouse's Point	Clinton	1,800	1877
Roxbury	Delaware	500	1888
Rushville	Ontario and Yates	500	1866
Salamanca	Cattaraugus	5,000	1879
Sandy Creek	Oswego	1,200	1878
Sandy Hill	Washington	3,600	1810
Saranac Lake	Franklin	1,800	1892
Savona	Steuben	700	1882
Schenevus	Otsego	700	1870
Schoharie	Schoharie	1,000	1867
Schuylerville	Saratoga	1,700	1831
Sea Cliff	Queens	1,500	1883
Sharon Springs	Schoharie	600	1871
Sherburne	Chenango	925	1830
Sherman	Chautauqua	1,000	1890
Shortsville	Ontario	1,000	1889
Sidney	Delaware	2,500	1888
Silver Springs	Wyoming	700	1894
Silver Creek	Chautauqua	2,000	1856
Sinclairville	Chautauqua	700	1887
Skaneateles	Onondaga	1,600	1833
Solvay	Onondaga	3,500	1894
Southampton	Suffolk	1,500	1894
South Glens Falls	Saratoga	1,700	1895
South Nyack	Rockland	1,200	1878
Spencer	Tioga	900	1886
Spencerport	Monroe	800	1884
Springville	Erie	2,200	1834
St. Johnville	Montgomery	2,000	1868
Suffern	Rockland	1,350	1896
Tannersville	Greene	350	1895
Tarrytown	Westchester	3,600	1870
Theresa	Jefferson	1,200	1871
Ticonderoga	Essex	3,000	1889
Tivoli	Dutchess	1,400	1872
Tonawanda	Erie and Niagara	9,000	1853
Tottenville	Richmond	2,500	1894
Trumansburg	Tompkins	1,300	1872
Tully	Onondaga	600	1876
Turin	Lewis	450	1872
Unadilla	Otsego	1,300	1889
Union	Broome	800	1871
Unionville	Orange	500	1871
Upper Nyack	Rockland	550	1872

Village.	County.	Estimated population.	When incorporated.
Valatie	Columbia	1,350	1850
Van Ettenville	Chemung	450	1876
Vernon	Oneida	350	1827
Victor	Ontario	800	1879
Victory	Saratoga	650	1848
Walton	Delaware	3,500	1851
Wappingers Falls	Dutchess	4,300	1871
Washingtonville	Orange	735	1895
Waterville	Oneida	1,700	1871
Waverly	Tioga	5,000	1854
Wayland	Steuben	1,000	1877
Wellsburg	Chemung	600	1872
Wellsville	Allegany	4,000	1858
West Haverstraw	Rockland	2,000	1883
West Salamanca	Cattaraugus	500	1884
Windsor	Broome	800	1897
Whitney's Point	Broome	1,000	1871
Wolcott	Wayne	1,200	1873
Wurtsboro	Sullivan	450	1866
Youngstown	Niagara	350	1854

II.—VILLAGES UNDER SPECIAL ACT.

Addison	Steuben	2,500	1873
Albion	Orleans	5,000	1828
Alexander	Genesee	400	1834
Angelica	Allegany	1,000	1835
Argyle	Washington	250	1838
Athens	Greene	2,000	1805
Attica	Wyoming	1,900	1837
Avon	Livingston	1,800	1807
Batavia	Genesee	7,000	1823
Bath	Steuben	3,300	1816
Bath-on-Hudson	Rensselaer	3,500	1874
Bainbridge	Chenango	1,200	1829
Brownville	Jefferson	800	1828
Cambridge	Washington	1,800	1866
Camden	Oneida	2,300	1834
Canandaigua	Ontario	6,100	1815
Canton	St. Lawrence	2,500	1845
Carthage	Jefferson	2,900	1841
Catskill	Greene	5,000	1806
Chateaugay	Franklin	1,100	1869
Chatham	Columbia	2,000	1870
Cherry Valley	Otsego	800	1812
Churchville	Monroe	1,000	1867
Clifton Springs	Ontario	1,500	1859
Clinton	Oneida	1,200	1843
Cleveland	Oswego	800	1857
Clyde	Wayne	3,000	1835

Village.	County.	Estimated population.	When incorporated.
Cobleskill	Schoharie	2,400	1866
Cooperstown	Otsego	2,800	1807
College Point	Queens	7,000	1867
Cortland	Cortland	9,000	1864
Corfu	Genesee	500	1868
Dansville	Livingston	3,800	1845
Delhi	Delaware	2,200	1821
Deposit	Broome and Delaware	2,500	1811
Dryden	Tompkins	800	1857
Edgewater	Richmond	16,000	1866
Esperance	Schoharie	350	1818
Fairport	Monroe	3,100	1867
Flushing	Queens	10,000	1857
Frederonia	Chautauqua	3,900	1829
Fulton	Oswego	5,000	1835
Galway	Saratoga	200	1835
Geneseo	Livingston	2,300	1832
Geneva	Ontario	11,000	1812
Gouverneur	St. Lawrence	4,000	1868
Greenbush	Rensselaer	8,000	1816
Green Island	Albany		
Hamilton	Madison	2,000	1868
Homer	Cortland	4,500	1835
Honeoye Falls	Monroe	1,300	1838
Hoosick Falls	Rensselaer	7,000	1827
Horseheads	Chemung	3,000	1832
Ilion	Herkimer	5,000	1852
Jamaica	Queens	7,000	1814
Jordan	Onondaga	1,500	1835
Kinderhook	Columbia	1,000	1839
Lancaster	Erie	3,500	1852
Lansingburgh	Rensselaer	13,500	1798
Lewiston	Niagara	800	1822
Laurens	Otsego	300	1834
LeRoy	Genesee	2,743	1834
Lima	Livingston	1,000	1867
Lyons	Wayne	5,000	1831
Mayville	Chautauqua	1,200	1867
McGrawville	Cortland	1,000	1869
Mechanicville	Saratoga	4,500	1870
Medina	Orleans	4,900	1832
Mohawk	Herkimer	2,000	1844
Montgomery	Orange	1,150	1810
Monticello	Sullivan	1,100	1830
Montour Falls	Schuyler	1,500	1868
Mount Morris	Livingston	2,500	1835
Moravia	Cayuga	1,400	1859
Nassau	Rensselaer	500	1866
New Berlin	Chenango	1,400	1816

Village	County.	Estimated population.	When incorporated.
New Brighton	Richmond	20,000	1866
New Rochelle	Westchester	13,000	1858
Newark	Wayne	4,500	1839
Norwich	Chenango	6,500	1857
Nunda	Livingston	1,200	1839
Oneida	Madison	7,000	1849
Oneonta	Otsego	8,500	1870
Owego	Tioga	6,000	1827
Palatine Bridge	Montgomery	400	1867
Palmyra	Wayne	2,300	1828
Panama	Chautauqua	600	1861
Peekskill	Westchester	12,000	1828
Penn Yan	Yates	5,000	1810
Perry	Wyoming	2,000	1830
Phoenix	Oswego	1,500	1848
Pittsford	Monroe	1,000	1827
Plattsburgh	Clinton	9,000	1815
Port Byron	Cayuga	1,200	1837
Port Chester	Westchester	7,500	1868
Port Jervis	Orange	10,000	1853
Port Richmond	Richmond	8,000	1866
Richfield Springs	Otsego	1,700	1861
Rhinebeck	Dutchess	1,600	1867
Sacketts Harbor	Jefferson	1,000	1821
Sag Harbor	Suffolk	3,500	1803
Salem	Washington	1,300	1803
Saratoga Springs	Saratoga	13,000	1866
Saugerties	Ulster	4,000	1831
Savannah	Wayne	600	1867
Schaghticoke	Rensselaer	1,350	1867
Seneca Falls	Seneca	7,000	1831
Sing Sing	Westchester	8,500	1804
Stamford	Delaware	1,000	1870
Stillwater	Saratoga	1,000	1816
Trenton	Oneida	500	1864
Waddington	St. Lawrence	1,000	1839
Walden	Orange	2,300	1870
Waterford	Saratoga	3,200	1794
Waterloo	Seneca	4,500	1807
Watkins	Schuyler	3,500	1842
Warsaw	Wyoming	3,000	1843
Warwick	Orange	1,800	1867
Weedsport	Cayuga	2,000	1831
Westfield	Chautauqua	4,000	1833
Williamsville	Erie	1,000	1869
Whitestone	Queens	4,000	1869
Whitehall	Washington	5,000	1806
Whitesboro	Oneida	1,800	1813
White Plains	Westchester	8,000	1866

III.—VILLAGES UNDER GENERAL ACT OF 1847.

Village.	County.	Estimated population.	When incorporated.
Antwerp	Jefferson	1,000	1854
Baldwinsville	Onondaga	4,000	1847
Cayuga	Cayuga	525	1857
Dexter	Jefferson	1,000	1855
Elbridge	Onondaga	700	1848
Ellenville	Ulster	3,500	1856
Forestville	Chautauqua	828	1848
Lisle	Broome	500	1866
Malone	Franklin	5,300	1853
Nelsonville	Putnam	500	1853
New Hartford	Oneida	1,000	1870
Oswego Falls	Oswego	1,600	1853
Red Creek	Wayne	550	1852
Smyrna	Chenango	350	1829
Union Springs	Cayuga	1,000	1848
Wilson	Niagara	600	1858

According to this list there are now 273 villages under the general law of 1870, 124 under special charters and 16 under the general law of 1847, making in all, 413. The total estimated population of general villages is 446,058, and of special villages, 458,143, making a total population of 904,201. The largest village is New Brighton, with a population of 20,000, and the smallest is Galway, with a population of 200. According to the list the oldest village in the State is Waterford, incorporated in 1794. We note a tendency among villages incorporated by special law to reincorporate under the general law of 1870, and that tendency will, perhaps, be increased if the pending bill becomes a law. According to the estimate of the population furnished to the commission there will be, under the pending bill, 46 villages of the first class, 46 of the second class, 179 of the third class and 142 of the fourth class; but this classification will, doubtless, be materially changed as a result of the enumeration to be taken in January, 1898.

All of which is respectfully submitted.

Dated, Albany, February 22, 1897.

CHARLES Z. LINCOLN,
WILLIAM H. JOHNSON,
A. JUDD NORTHRUP,
Commissioners of Statutory Revision.

The list of Incorporated villages of the State, prepared by the Secretary of State in 1909 includes the following villages incorporated under the Village Law:

Village.	County.	Estimated population.	When incorporated.
Akin	Montgomery	530	1909
Allegany	Cattaraugus	1,330	1905
Barker	Niagara	404	1908

Village.	County.	Estimated population.	When incorporated.
Belfast	Allegany	804	1906
Blasdell	Erie	702	1898
Bloomington	Essex	1,372	1906
Briar Cliff Manor	Westchester	417	1902
Bronxville	Westchester	994	1898
Burdett	Schuyler	378	1898
Candor	Tioga	802	1900
Cold Brook	Herkimer	318	1903
Croghan	Lewis	608	1906
Croton-on-Hudson	Westchester	1,599	1898
Dannemora	Clinton	633	1901
East Rochester	Monroe	200	1906
East Rockaway	Nassau	877	1900
Endicott	Broome	1,317	1906
Farmingdale	Nassau	1,234	1904
Fishkill	Dutchess	579	1899
Floral Park	Nassau	901	1908
Forestport	Oneida	689	1903
Friendship	Allegany	1,259	1898
Gainsville	Wyoming	309	1902
Grandview-on-Hudson	Rockland	356	1900
Hammond	St. Lawrence	385	1901
Highland Falls	Orange	2,992	1906
*Interlaken	Seneca	717	1904
Kenmore	Erie	506	1899
Lake George	Warren	644	1903
Lake Placid	Essex	1,514	1900
La Salle	Niagara	1,023	1897
Lawrence	Nassau	1,500	1897
Lyndonville	Orleans	512	1903
Lyons Falls	Lewis	709	1899
Marlboro	Ulster	776	1906
Mineola	Nassau	1,240	1906
Moers	Clinton	537	1899
Moscow	Livingston	252	1907
Nichols	Tioga	452	1903
Odessa	Schuyler	354	1903
Old Forge	Herkimer	200	1903
Pleasant Valley	Dutchess	429	1903
Pleasantville	Westchester	1,535	1897
Rifton	Ulster	581	1901
Rye	Westchester	4,076	1904
Scotia	Schenectady	2,166	1904
Sherman Park	Westchester	288	1906
Spring Valley	Rockland	2,583	1902
Tuckahoe	Westchester	1,580	1902
Tupper Lake	Franklin	2,769	1902
Valley Falls	Rensselaer	888	1904

*Formerly Farmer.

Village.	County.	Estimated population.	When incorporated.
Voorheesville	Albany	479	1899
Wampsville	Madison	206	1907
Webster	Monroe	850	1905
Westport	Essex	659	1907
West Winfield	Herkimer	749	1898
Woodhull	Steuben	342	1899
Yorkville	Oneida	524	1902

PART II

PART II.

MISCELLANEOUS LAWS AFFECTING VILLAGES.

- I. General Construction Law, an act to prescribe rules for construction of Consolidated Laws.
- II. General Municipal Law.
- III. Public Officers Law.
- IV. Transportation Corporation Law.
- V. Town Law.
- VI. County Law.
- VII. Public Health Law.
- VIII. Election Law.
- IX. Education Law.
- X. Highway Law.
- XI. Tax Law.
- XII. Penal Law.
- XIII. Miscellaneous Laws.
 - 1. Civil Service Law.
 - 2. Decedent Estate Law.
 - 3. Drainage Law.
 - 4. General Business Law.
 - 5. General Corporation Law.
 - 6. Insurance Law.
 - 7. Judiciary Law.
 - 8. Labor Law.
 - 9. Liquor Law.
 - 10. Membership Corporation Law.
 - 11. Military Law.
 - 12. Personal Property Law.
 - 13. Public Building Law.
 - 14. Public Service Commissions Law.
 - 15. Railroad Law.
 - 16. Real Property Law.
 - 17. State Board and Commissions Law.

I. GENERAL CONSTRUCTION LAW.

(Chapter 22 of the Consolidated Laws.)

Act to Prescribe Rules for Construction of Consolidated Laws (L. 1909, ch. 596.)

GENERAL CONSTRUCTION LAW.

(L. 1909, ch. 27.)

Article 1. Short title (§ 1).

2. Meaning of terms (§§ 10-58).

3. Ancient statutes and resolutions (§§ 70-72).

4. References, title and head notes (§§ 80, 81).
5. Effect of repeals (§§ 90-96).
6. Effect of consolidated laws (§§ 100, 101).
7. Application of chapter (§ 110).
8. Laws repealed; when to take effect (§§ 120, 121).

ARTICLE 1.

Short Title.

Section 1. Short title.

§ 1. Short title.

This chapter shall be known as the "General Construction Law."

ARTICLE 2.

Meaning of Terms.

Section 10. Acknowledge and acknowledgment.

11. Acknowledgment or proof of instrument.

12. Affidavit.

13. Adjournment or meeting.

14. Bond and undertaking.

15. Chattels.

16. Choose.

17. Civil code and criminal code.

18. Consolidated laws.

19. Day, calendar.

20. Day, computation.

21. Folio.

22. Gender.

23. Heretofore and hereafter.

24. Holiday and half holiday.

25. Holiday in contractual obligations.

26. Judge.

27. Last, preceding, next and following.

28. Lunatic and lunacy.

29. Men.

30. Month, computation.

31. Month in statute, contract and public or private instrument.

32. Municipal officers.

33. Notice.

34. Now.

35. Number, singular and plural.

36. Oath, affidavit and swear.

37. Person.

38. Property.

39. Property, personal.

40. Property, real.

41. Quorum and majority.

42. Register of county.

43. Seal of court, public officer or corporation.

- 44. Seal, private.
- 45. Seal, private as corporate seal.
- 46. Signature.
- 47. State.
- 48. Tense, present.
- 49. Territory.
- 50. Time, computation.
- 51. Time, night.
- 52. Time, standard.
- 53. Time, use of standard.
- 54. Village.
- 55. Women.
- 56. Writing and written.
- 57. Year, common and leap.
- 58. Year in statute, contract and public or private instrument.

§ 10. Acknowledge and acknowledgment.

The terms acknowledge and acknowledgment, when used with reference to the execution of an instrument or writing other than a deed of real property, include a compliance with the provisions of the next section by either such proof or acknowledgment.

§ 11. Acknowledgment or proof of instrument.

When the execution of any instrument or writing is authorized or required by law to be acknowledged, or to be proven so as to entitle it to be filed or recorded in a public office, the acknowledgment may be taken or the proof made before any officer then and there authorized to take the acknowledgment or proof of the execution of a deed of real property to entitle it to be recorded in a county clerk's office, and shall be made and certified in the same manner as such acknowledgment or proof of such deed.

§ 12. Affidavit.

When an affidavit is authorized or required it may be sworn to before any officer authorized by law to take the acknowledgment of deeds in this state, unless a particular officer is specified before whom it is to be taken.

§ 13. Adjournment of meeting.

Any meeting referred to in section forty-one of this chapter may be adjourned by a less number than a quorum.

§ 14. Bond and undertaking.

A provision of law authorizing or requiring a bond to be given shall be deemed to have been complied with by the execution of an undertaking to the same effect.

§ 15. Chattels.

The term chattels includes goods and chattels.

§ 16. Choose.

The term choose includes elect and appoint.

§ 17. Civil code and criminal code.

The term civil code means the code of civil procedure. The term criminal code means the code of criminal procedure.

§ 18. Consolidated Laws.

The term Consolidated Laws shall mean the compilation of the statutes prepared by the board of statutory consolidation and the amendments thereof.

§ 19. Day, calendar.

A calendar day includes the time from midnight to midnight. Sunday or any day of the week specifically mentioned means a calendar day.

§ 20. Day, computation.

A number of days specified as a period from a certain day within which or after or before which an act is authorized or required to be done means such number of calendar days exclusive of the calendar day from which the reckoning is made. Sunday or a public holiday, other than a half holiday, must be excluded from the reckoning if it is the last day of any such period, or if it is an intervening day of any such period of two days. In computing any specified period of time from a specified event, the day upon which the event happens is deemed the day from which the reckoning is made. The day from which any specified period of time is reckoned shall be excluded in making the reckoning.

Amended by L. 1910, ch. 347, in effect May 21, 1910.

§ 21. The term folio shall mean one hundred words, counting each figure as a word.

When an officer empowered by law to do so shall order an official advertisement published in a newspaper in display type or to be so displayed as to leave an unusual quantity of blank space in the advertisement, or to contain pictures or diagrams, or where the character of such advertisement requires it, such advertisement shall be paid for by measurement over all of such space necessarily used, two square inches of space to count as one folio. When there are over fifty and under one hundred words, they shall be counted as one folio; but a less number than fifty words shall not be counted, except when the whole statute, notice or order contains less than fifty words.

Amended by L. 1914, ch. 72, in effect March 24, 1914.

§ 22. Gender.

Words of the masculine gender include the feminine and the neuter, and may refer to a corporation, or to a board or other body or assemblage of persons; and, when the sense so indicates, words of the neuter gender may refer to any gender.

§ 23. Heretofore and hereafter.

Each of the terms, heretofore, and hereafter, in any provision of a statute, relates to the time such provision takes effect.

§ 24. Holiday and half holiday.

The term holiday includes the following days in each year: The first day of January, known as New Year's day; the twelfth day of February, known as Lincoln's birthday; the twenty-second day of February, known as Washington's birthday; the thirtieth day of May, known as Memorial day; the fourth day of July, known as Independence day; the first Monday of September, known as Labor day; the twelfth day of October, known as Columbus day; and the twenty-fifth day of December, known as Christmas day, and if either of such days is Sunday, the next day thereafter; each general election day and each day appointed by the president of the United States, or by the governor of this state as a day of general thanksgiving, general fasting and

prayer, or other general religious observances. The term half holiday includes the period from noon to midnight of each Saturday which is not a holiday.

Amended by L. 1909, ch. 112.

§ 25. Holiday in contractual obligations.

Where a contract by its terms requires the payment of money or the performance of a condition on a public holiday, such payment may be made or condition performed on the next business day succeeding such holiday, with the same force and effect as if made or performed in accordance with the terms of the contract.

§ 26. Judge.

The term judge includes every judicial officer authorized, alone or with others, to hold or preside over a court of record.

§ 27. Last, preceding, next and following.

A reference to the last or preceding section, or other provision of a statute, means the section or other division immediately preceding, and a reference to the next or following section or other division of a statute means the section or other division immediately following.

§ 28. Lunatic and lunacy.

The terms lunatic and lunacy include every kind of unsoundness of mind except idiocy.

§ 29. Men.

The term men includes boys.

§ 30. Month, computation.

A number of months after or before a certain day shall be computed by counting such number of calendar months from such day, exclusive of the calendar month in which such day occurs, and shall include the day of the month in the last month so counted having the same numerical order in days of the month as the day from which the computation is made, unless there be not so many days in the last month so counted, in which case the period computed shall expire with the last day of the month so counted.

§ 31. Month in statute, contract and public or private instrument.

In a statute, contract or public or private instrument, unless otherwise provided in such contract or instrument or by law, the term month means a calendar month and not a lunar month.

§ 32. Municipal officers.

A reference to several officers of a municipal corporation holding the same office, or to a board of such officers, shall be deemed to refer to the single officer holding such office, when but one person is chosen to fill such office in pursuance of law.

§ 33. Notice.

When a notice is required to be given to a board or body, service of such notice upon the clerk or chairman thereof shall be sufficient.

§ 34. Now.

The term now in any provision of a statute referring to other laws in force, or to persons in office, or to any facts or circumstances as existing, relates to the laws in force, or to the person in office, or to the facts or circumstances existing, respectively, immediately before the taking effect of such provision.

§ 35. Number, singular and plural.

Words in the singular number include the plural, and in the plural number include the singular.

§ 36. Oath, affidavit and swear.

The terms oath and affidavit include every mode authorized by law of attesting the truth of that which is stated. The term swear includes every mode authorized by law for administering an oath.

§ 37. Person.

The term person includes a corporation and a joint-stock association. When used to designate a party whose property may be the subject of any offense, the term person also includes the state, or any other state, government or country which may lawfully own property in the state.

§ 38. Property.

The term property includes real and personal property.

§ 39. Property, personal.

The term personal property includes chattels, money, things in action, and all written instruments themselves, as distinguished from the rights or interests to which they relate, by which any right, interest, lien or incumbrance in, to or upon property, or any debt or financial obligation is created acknowledged, evidenced, transferred, discharged or defeated, wholly or in part, and everything, except real property, which may be the subject of ownership.

Oil wells and all fixtures connected therewith, situate on lands leased for oil purposes and oil interests, and rights held under and by virtue of any lease or contract or other right or license to operate for or produce petroleum oil, shall be deemed personal property for all purposes except taxation.

§ 40. Property, real.

The term real property includes real estate, lands, tenements and hereditaments, corporeal and incorporeal.

§ 41. Quorum and majority.

Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of all such persons or officers at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to all of them, may perform and exercise such power, authority or duty, and if one or more of such persons or officers shall have died or have become mentally incapable of acting, or shall refuse or neglect to attend any such

meeting, a majority of the whole number of such persons or officers shall be a quorum of such board or body, and a majority of a quorum, if not less than a majority of the whole number of such persons or officers may perform and exercise any such power, authority or duty.

§ 42. Register of county.

Any act done in pursuance of law by the register of a county shall be deemed to be a compliance with any provision of law authorizing or requiring such act to be done by the county clerk of such county, and any instrument or writing filed, entered or recorded in pursuance of law in the office of a register of a county, shall be deemed to be a compliance with any provision of law authorizing or requiring such paper to be filed, entered or recorded, as the case may be, in the office of the clerk of such county. The term county clerk when used in relation to conveyances of real property or the filing or recording of instruments which are or may be filed in the office of the register of a county, shall include the register of each county in which there is a register.

§ 43. Seal of court, public officer or corporation.

A seal of a court, public officer or corporation may be impressed directly upon the instrument or writing to be sealed, or upon wafer, wax or other adhesive substance affixed thereto, or upon paper, or other similar substance affixed thereto by mucilage or other adhesive substance.

§ 44. Seal, private.

The private seal of a person, other than a corporation, to any instrument or writing shall consist of a wafer, wax or other similar adhesive substance affixed thereto, or of paper or other similar substance affixed thereto, by mucilage or other adhesive substance, or of the word "seal," or the letters "L. S.," opposite the signature.

§ 45. Seal, private as corporate seal.

An instrument or writing duly executed, in the corporate name of a corporation, which shall not have adopted a corporate seal, by the proper officers of the corporation under their private seals, shall be deemed to have been executed under the corporate seal.

§ 46. Signature.

The term signature includes any memorandum, mark or sign, written or placed upon any instrument or writing with intent to execute or authenticate such instrument or writing.

§ 47. State

The term state, when used generally to include every state of the United States, includes also every territory of the United States and the District of Columbia.

§ 48. Tense, present.

Words in the present tense include the future.

§ 49. Territory.

The term territory when used generally to include every territory of the United States, includes also the District of Columbia.

§ 50. Time, computation.

Time shall continue to be computed in this state according to the Gregorian or new style. The first day of each year after the year seventeen hundred and fifty-two is the first day of January, according to such style.

§ 51. Time, night.

Night time includes the time from sunset to sunrise.

§ 52. Time, standard.

The standard time throughout this state is that of the seventy-fifth meridian of longitude west from Greenwich, except that at two o'clock ante meridian of the last Sunday in March of each year such standard time throughout this state shall be advanced one hour, and at two o'clock ante meridian of the last Sunday in October of each year such standard time throughout this state shall, by the retarding of one hour, be returned to the mean astronomical time of the seventy-fifth meridian of longitude west from Greenwich, and all courts and public officers, and legal and official proceedings, shall be regulated thereby. (Amended by L. 1918, Ch. 112, in effect March 28, 1918.)

§ 53. Time, use of standard.

Any act required by or in pursuance of law to be performed at or within a prescribed time, shall be performed according to the standard time.

§ 54. Village.

The term village means an incorporated village.

§ 55. Women.

The term women includes girls.

§ 56. Writing and written.

The terms writing and written include every legible representation of letters upon a material substance, except when applied to the signature of an instrument.

§ 57. Year, common and leap.

For the purpose of computing and reckoning the days of the year in the same regular course in the future, every year, the number of which in the Christian era is a multiple of four, is a bissextile or leap year consisting of three hundred and sixty-six days, unless such number of the year is a multiple of one hundred and the first two figures thereof treated as a separate number is not a multiple of four, and every year which is not a leap year is a common year consisting of three hundred and sixty-five days.

§ 58. Year in statute, contract and public or private instrument.

The term year in a statute, contract or any public or private instrument, means three hundred and sixty-five days, but the added day of a leap year and the day immediately preceding shall for the purpose of such computation be counted as one day. In a statute, contract or public or private instrument, the term year means twelve months, the term half year, six months, and the term a quarter of a year, three months.

ARTICLE 3.

Ancient Statutes and Resolutions.

Section 70. Statutes of England and Great Britain inoperative in this state.

71. Acts of the legislature of the colony of New York inoperative.

72. Resolutions of the congress of the colony and the convention of New York inoperative.

§ 70. Statutes of England and Great Britain inoperative in this state.

A statute of England or Great Britain shall not be deemed to have had any force or effect in this state since May first, seventeen hundred and eighty-eight.

§ 71. Acts of the legislature of the colony of New York inoperative.

Acts of the legislature of the colony of New York shall not be deemed to have had any force or effect in this state since December twenty-ninth, eighteen hundred and twenty-eight.

§ 72. Resolutions of the congress of the colony and the convention of New York inoperative.

The resolutions of the congress of the colony of New York and of the convention of the state of New York, shall not be deemed to be the laws of this state hereafter.

ARTICLE 4.

References, Titles and Head Notes.

Section 80. References to repealed provisions.

81. Titles and head notes.

§ 80. References to repealed provisions.

If any provision of a law be repealed and, in substance, re-enacted, a reference in any law to such repealed provision shall be deemed a reference to such re-enacted provision.

§ 81. Titles and head notes.

If the title of any article or other division of a statute, or the head note of a section shall be amended or repealed in the body of the statute, or if a new article or other division having a title, or a new section having a new head note be added to a statute, the corresponding title or head note, if any, in an abstract of contents at the beginning of the article or other division of the statute shall be deemed to be correspondingly amended or repealed, although there be no express reference thereto.

ARTICLE 5.

Effect of Repeals.

Section 90. Effect of the repeal of a repealing statute.

91. Effect of the repeal of a statute upon amendments thereof.

92. Effect of the repeal of an amending statute.

93. Effect of repealing statute upon existing rights.

94. Effect of repealing statute upon pending actions and proceedings.

95. Effect of the repeal of a statute by another statute substantially re-enacting the former.

96. Effect of hyphen in schedule of repeals.

§ 90. Effect of the repeal of a repealing statute.

The repeal hereafter or by this chapter of any provision of a statute, which repeals any provision of a prior statute, does not revive such prior provision.

§ 91. Effect of the repeal of a statute upon amendments thereof.

The repeal by the Consolidated Laws of a statute includes a statute amendatory of the statute repealed.

§ 92. Effect of the repeal of an amending statute.

The repeal hereafter or by this chapter of any provision of a statute, which amends a provision of a prior statute, leaves such prior provision in force unless the amendatory statute be a substantial re-enactment of the statute amended.

§ 93. Effect of repealing statute upon existing rights.

The repeal of a statute or part thereof shall not affect or impair any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected.

§ 94. Effect of repealing statute upon pending actions and proceedings.

Unless otherwise specially provided by law, all actions and proceedings, civil or criminal, commenced under or by virtue of any provision of a statute so repealed, and pending immediately prior to the taking effect of such repeal, may be prosecuted and defended to final effect in the same manner as they might if such provisions were not so repealed.

§ 95. Effect of the repeal of a statute by another statute substantially re-enacting the former.

The provisions of a law repealing a prior law, which are substantial re-enactments of provisions of the prior law, shall be construed as a continuation of such provisions of such prior law, modified or amended according to the language employed, and not as new enactments.

§ 96. Effect of hyphen in schedule of repeals.

When two numbers in a schedule of repeals of the consolidated laws are connected by a hyphen both such numbers are included as well as all intermediate numbers.

ARTICLE 6.**Effect of Consolidated Laws.**

Section 100. Effect of consolidation upon laws passed at same session or before consolidation takes effect.

101. Effect of consolidated laws on penal law and civil and criminal codes.

§ 100. Effect of consolidation upon laws passed at same session or before consolidation takes effect.

No provision of any chapter of the consolidation of the general laws, of which this chapter is a part, shall supersede or repeal by implication any

law passed at the same session of the legislature at which any such chapter was enacted, or passed after the enactment of any such chapter and before it shall have taken effect; and an amendatory law passed at such session or at any subsequent session begun before any such chapter takes effect, shall not be deemed repealed, unless specifically designated in the repealing schedule of such chapter.

§ 101. Effect of consolidated laws on penal law and civil and criminal codes.

The Consolidated Law shall not be construed to amend, repeal or otherwise affect any provision of the penal law, code of civil procedure or code of criminal procedure unless expressly so stated.

ARTICLE 7.

Application of Chapter.

Section 110. Application of chapter.

§ 110. Application of chapter.

This chapter is applicable to every statute unless its general object, or the context of the language construed, or other provisions of law indicate that a different meaning or application was intended from that required to be given by this chapter.

ARTICLE 8.

Laws Repealed; When to Take Effect.

Section 120. Laws repealed.

121. When to take effect.

§ 120. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 121. When to take effect.

This chapter shall take effect immediately.

**AN ACT TO PRESCRIBE THE RULES FOR THE CONSTRUCTION OF
THE CONSOLIDATED LAWS AND CODE AMENDMENTS.**

(L. 1909, ch. 596.)

Section 1. In construing the consolidated laws and the amendments to the code of civil procedure and the code of criminal procedure reported to the legislature by the board of statutory consolidation constituted under the provisions of chapter six hundred and sixty-four, of the laws of nineteen hundred and four, entitled "An act to provide for the consolidation of the statutes of the state," and enacted by the legislature of nineteen hundred and nine and in construing the act amendatory thereof, known as chapter two hundred and forty of the laws of nineteen hundred and nine, for the purpose of determining the effect of any of the provisions or sections thereof or any other provision or section thereof, or on any special laws theretofore enacted, the several provisions and sections of such law and code amendments and

said act amendatory thereof shall not be considered as having been enacted or re-enacted by the legislature at the time of the passage of the consolidated laws or such code amendments or said act amendatory thereof but as having been enacted as of the various times when such provisions and sections first became laws by any earlier statutes, provided, however, that when any provision of law after its first enactment by the legislature has been amended or re-enacted then for the purpose of its construction for the determination of its effect on other sections or provisions of the consolidated laws, it shall be considered as having been enacted at the date of such amendment or re-enactment. If in any such consolidated law and such amendments to the code of civil procedure and the code of criminal procedure as enacted by the legislature of nineteen hundred and nine of said act amendatory thereof there shall have been incorporated any provisions of the law that have heretofore been superseded or impliedly repealed, the incorporation of any such provisions shall not be construed as a legislative intent to revive such superseded or repealed provisions, nor shall such incorporation in such consolidated laws be construed to indicate any legislative determination that such provisions had not been heretofore so superseded or repealed. The true purpose and intent of this act is to prescribe that the statute law of the state, so far as it has been reproduced in such consolidated laws and in such amendments to the code of civil procedure and the code of criminal procedure, and in said chapter two hundred and forty of the laws of nineteen hundred and nine, and all special laws in force at the time of the enactment of such consolidated laws, shall be of the same force and effect as they were before the enactment of such consolidated laws or code amendments or said act amendatory thereof.

II. GENERAL MUNICIPAL LAW.

(Chapter 24 of the Consolidated Laws.)

GENERAL MUNICIPAL LAW.

- Article**
1. Short title; definitions (§§ 1, 2).
 2. General municipal finances (§§ 3-20).
 3. Report of financial condition (§§ 30-38).
 4. Negligence and malfeasance of public officers; taxpayers' remedies (§§ 50-55).
 5. Powers, limitations and liabilities (§§ 70-89).
 6. Public health and safety (§§ 120-125).
 7. Trusts for parks and libraries in villages and towns (§§ 140-146).
 - 7a. Local boards of child welfare (§§ 148-155).
 8. Cemeteries (§§ 160-163).
 9. Regulation of use of bicycles and similar vehicles (§§ 180-183).
 10. Firemen and policemen (§§ 200-207).
 11. Acquisition of lands by the United States (§§ 210-212).
 12. Railroad aid bonds (§§ 220-233).
 - 12a. City and village planning commissions.
 13. Laws repealed; when to take effect (§§ 240, 241).

ARTICLE 1.

Short Title; Definitions.

- Section**
1. Short title.
 2. Definitions.

§ 1. Short title.

This chapter shall be known as the "General Municipal Law."

§ 2. Definitions.

The term "municipal corporation," as used in this chapter, includes only a county, town, city and village. The term "governing board" includes the board of supervisors of a county, the town board of a town, the common council of a city, and the board of trustees of a village.

ARTICLE 2.

General Municipal Finances.

- Section**
3. Limitation of indebtedness.
 4. Investigation of expenditures of towns and villages.
 5. Temporary loans.
 6. Funded debt.
 7. Payment of municipal bonds.
 8. Funded and bonded debts.
 9. Issuance of municipal bonds.
 10. Registry of municipal bonds.
 11. Conversion of coupon into registered bonds.
 12. Defects not invalidating municipal bonds.
 13. Municipal taxes of railroads payable to county treasurers.
 14. Appointment of railroad commissioners.
 15. Oath and undertaking of commissioners.

16. Abolition of office of railroad commissioners.
17. Exchange or sale of railroad stock and bonds.
18. Annual report of commissioners and payment of bonds.
19. Accounts and loans by commissioners.
20. Reissue of lost or destroyed bonds.
21. Maximum rate of interest on municipal bonds.
22. Legalizing proceedings.
23. Petition.
24. Notice of presentation of petition; filing; answer.
25. Hearing.
26. Determination of court.
27. Appeal.
28. Effect of determination.
29. Definitions.

§ 3. Limitation of indebtedness.

No county containing a city of more than one hundred thousand inhabitants, nor any such city shall contract any debt, the amount of which, exclusive of its outstanding debt, shall exceed a sum equal to five per centum of the aggregate valuation of the real property within its bounds, as assessed for state and county purposes upon the then last corrected assessment-roll, nor shall it contract any such debt if the amount thereof inclusive of its outstanding debts shall exceed a sum equal to ten per centum of such valuation. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes of amounts actually contained or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issuing of bonds to provide for the supply of water, but the term of the bonds issued to provide for the supply of water shall not exceed twenty years, and the sinking fund shall be created on the issuing of said bonds for their redemption by raising annually a sum which will produce an amount equal to the amount of the principal of said sum and interest of said bonds at their maturity. This section shall not apply to debts contracted for the purpose of retiring or paying any existing indebtedness pursuant to the provisions of this chapter.

§ 4. Investigation of expenditures of towns and villages.

If twenty-five freeholders in any town or village shall present to a justice of the supreme court of the judicial district in which such town or village is situated, an affidavit, stating that they are freeholders and have paid taxes on real property within such town or village within one year, that they have reason to believe that the moneys of such town or village are being unlawfully or corruptly expended, and the grounds of their belief, such justice, upon ten days' notice to the supervisor, and the officers of the town disbursing the funds to which such moneys belong, or the trustees and treasurer of the village, shall make a summary investigation into the financial affairs of such town or village, and the accounts of such officers, and, in his discretion, may appoint experts to make such investigation, and may cause the result thereof to be published in such manner as he may deem proper.

The costs incurred in such investigation shall be taxed by the justice, and paid, upon his order, by the officers whose expenditures are investigated, if the facts in such affidavit be substantially proved, and otherwise, by the freeholders making such affidavit. If such justice shall be satisfied that any of the moneys of such town or village are being unlawfully or corruptly expended, or are being appropriated for purposes to which they are not properly applicable, or are improvidently squandered or wasted, he shall forthwith grant an order restraining such unlawful or corrupt expenditure, or such other improper use of such moneys.

§ 5. Temporary loans.

Moneys shall not be borrowed by a municipal corporation on temporary loan, except in anticipation of the taxes of the current fiscal year, and for the purposes for which such taxes are levied, and shall not be in excess of the amount of such taxes. Such loans shall be payable out of the taxes on account of which such loans are made, and in no case shall interest run on any such loan after such taxes are paid into the treasury of the corporation.

Amended by L. 1916, Ch. 166, in effect April 7, 1916.

§ 6. Funded debt.

A funded debt shall not be contracted by a municipal corporation, except for a specific object, expressly stated in the ordinance or resolution proposing it; nor unless such ordinance or resolution shall be passed by a two-thirds vote of all the members elected to the board or council adopting it, or submitted to and approved by the electors of the town or county, or taxpayers of the village or city when required by law; provided, however, that a funded debt contracted by a city of the second class for the building of a school building or for the construction or reconstruction of a school building shall require for its passage only a majority vote of all the members elected to the common council adopting it. Such ordinance or resolution shall provide for raising annually, by tax, a sum sufficient to pay the interest and the principal, as the same shall become due. Whenever bonds have been issued and sold, prior to January first, nineteen hundred and eighteen, pursuant to this section, by a city of the second class, located in a county having a population of not less than two hundred thousand nor more than two hundred and fifty thousand, the proceeds or any part thereof may be used for any purpose for which bonds may be issued if authorized by a two-thirds vote of all the members elected to the common council and such action of the common council is ratified by a two-thirds vote of the members of the board of estimate and apportionment of such city.

Amended by L. 1910, ch. 677, and L. 1918, ch. 210, in effect April 15, 1918.

§ 7. Payment of municipal bonds.

Where the bonds of a municipal corporation have been lawfully issued, and the payment of the principal or interest thereof shall not have been otherwise paid or provided for, the same shall be a charge upon such corporation, and shall be levied and assessed, collected and paid the same as other debts and charges. When for any reason any portion of the principal or interest due upon such bonds shall not have been paid; the same shall be assessed, levied and collected at the first assessment and collection of taxes by such corporation after such omission.

§ 8. Funded and bonded debts.

The bonded indebtedness of a municipal corporation, including interest due or unpaid, or any part thereof, may be paid up or retired by the issue of the new substituted bonds for like amounts by the board of supervisors or supervisor, board, council or officers having in charge the payment of such bonds. Such new bonds shall only be issued when the existing bonds can be retired by the substitution of the new bonds therefor, or can be paid up by money realized by the sale of such new bonds. Where such bonded indebtedness shall become due within two years from the issue of such new bonds, such new bonds may be issued and sold to provide money in advance to pay up such existing bonds when they shall become due. Such new bonds shall contain a recital that they are issued pursuant to this section, which recital shall be conclusive evidence of their validity and of the regularity of the issue; shall be made payable not less than one or more than thirty years from their date; shall bear date and draw interest from the date of the payment of the existing bonds, or the receipt of the money to pay the same, at not exceeding the rate of five per centum per annum, payable quarterly, semi-annually or annually; and an amount equal to not less

than two per centum of the whole amount of such new bonds may be payable each year after the issue thereof. Such new bonds shall be sold and negotiated at the best price obtainable, not less than their par value; shall be valid and binding on the municipal corporation issuing them. All bonds and coupons retired or paid shall be immediately canceled. A certificate shall be issued by the officer, board or body issuing such new bonds, stating the amount of existing bonds, and of the new bonds so issued, which shall be forthwith filed in the office of the county clerk. Except as provided in this section, new bonds shall not be issued in pursuance thereof, for bonds of a municipal corporation adjudged invalid by the final judgment of a competent court. A majority of the taxpayers of a town, voting at a general town meeting, or special town meeting duly called, may authorize the issue in pursuance of this section of new bonds for such invalid bonds, and each new bond so issued shall contain substantially the following recital: "The issue of this bond is duly authorized by a vote of the taxpayers of the said town," which shall be conclusive evidence of such fact. The payment, adjustment or compromise of a part of the bonded indebtedness of a municipal corporation shall not be deemed an admission of the validity or a recognition of any part of the bonded indebtedness of such municipal corporation not paid, adjusted or compromised. All bonds of a municipal corporation, until payable, shall be exempt from taxation for town, county, municipal or state purposes.

§ 9. Issuance of municipal bonds.

Each bond issued by a municipal corporation shall be signed by each officer issuing the same, with the designation of his office; and the interest coupons attached thereto, if any, shall be signed by one of their number. Each such bond shall state the place of payment and, if no coupons are attached thereto, the name of the payee shall be inserted therein and registered with the treasurer, chamberlain, comptroller, supervisor, clerk or other designated official of such municipal corporation before any interest shall be paid thereon.

All bonds hereafter issued by any municipal corporation, or by any school district or civil division of the state, shall be sold, in the case of a city of the first class as required by its charter or by any special act under which such bonds are issued, in the case of a city of the second class as required by section sixty-one of the second class cities law, and in all other cases at public sale not less than five or more than thirty days after a notice of such sale, stating the amount, date, maturity and rate of interest, has been published at least once in the official paper or papers, if any, of any such municipality, provided that if there is no official paper, then such notice of sale shall be published in a newspaper published in the county in which such bonds are to be issued, or a copy thereof shall be sent to and published in a financial newspaper published and circulating in New York city.

Amended by L. 1917, Ch. 534, in effect May 17, 1917.

§ 10. Registry of municipal bonds.

Each municipal corporation shall keep in the office of its clerk suitable books, in which shall be entered a full description of the amount, rate of interest, class, number, date of issue, pursuant to what law, and maturity of all bonds issued by any of its officers, and, if such statement is not already entered, of all bonds converted from coupon into registered bonds. A bond to which no coupons are attached may be registered, at the request of the payee, in the books so kept in the office of such clerk, and a certificate of such registry shall be indorsed upon the bond by such clerk, and attested by his seal, if he has one. The clerk shall be entitled to a fee of twenty-five cents for each bond so registered. The principal and interest of a registered municipal bond shall be payable only to the payee, his legal representatives, successors or assigns, and shall be transferable only upon presentation to such clerk, with a written assignment duly acknowledged or proved. The name of the assignee shall be entered upon such bond so transferred and the books so kept in the office of the clerk. It shall be the duty of the clerk or other officer having charge of the office where such registry is kept, to transmit a statement of such indebtedness to the clerk of the board of supervisors of the county in which such office is situated, annually, on or before the first day of November. Except that in cities of the second class,

the books of the municipal corporation in which there shall be entered a description of the amount, rate of interest, class, number, date of issue, pursuant to what law, and the maturity of all bonds issued by any of its officers, and of all bonds converted from coupon into registered bonds, as above provided, shall be kept in the office of the comptroller of said city instead of in the office of the city clerk, and all the duties to be performed by the clerk of the municipal corporation, as hereinbefore provided, shall, in cities of the second class, be performed by the comptroller of said city instead of by the clerk; and all municipal bonds in cities of the second class shall be registered with the comptroller instead of with the clerk. And, except further, that in the case of the issuance of county bonds the books in which there shall be entered a description of the amount, rate of interest, class, number, date of issue, pursuant to what law, and the maturity of all bonds issued, by any of its officers and of all bonds converted from coupons into registered bonds, as above provided, shall be kept in the office of the county treasurer of such county and all the duties to be performed by the clerk of the municipal corporation, as hereinbefore provided, shall, in the case of county bonds, be performed by the county treasurer of such county; and all such county bonds shall be registered by the treasurer of the county instead of the clerk of such municipal corporation.

Amended by L. 1910, ch. 129, and L. 1915, ch. 382. In effect April 26, 1915.

§ 11. Conversion of coupon into registered bonds.

When the owner of coupon bonds of a municipal corporation shall present any such bonds to the officers who issued the same, or their successors, with a written request for their conversion into registered bonds, such officer shall cut off and destroy the coupons and stamp, print or write upon each of the bonds a statement, properly dated, of the amount and value of such coupons, and that the interest, at the rate and on the date, as was provided by the coupons, as well as the principal, is to be paid to such owner, his legal representatives, successors or assigns, at a place therein stated, which shall be the place stated in the coupons, unless changed with the written consent of the owner; and thereupon such bonds may be registered in the office of the clerk of the municipal corporation. This section shall not apply where provision is otherwise made by law or local ordinance, for the conversion or exchange of coupon for registered bonds.

§ 12. Defects not invalidating municipal bonds.

When the bonds of a municipal corporation have been issued and sold by the proper authorities, and the time fixed for their maturity shall be for a longer period than provided by the law under which they were issued, a variance of not exceeding sixty days shall not affect their validity.

§ 13. Municipal taxes of railroads payable to county treasurer.

If a town, village or city has outstanding unpaid bonds, issued, or substituted for bonds issued, to aid in the construction of a railroad therein, so much of all taxes as shall be necessary to take up such bonds, except school district and highway taxes, collected on the assessed valuation of such railroad in such municipal corporation, shall be paid over to the treasurer of the county in which the municipal corporation is located. Such treasurer shall purchase with such moneys of any town, village or city, such bonds, when they can be purchased at or below par, and shall immediately cancel them in the presence of the county judge. If such bonds can not be purchased at or below par, such treasurer shall invest such moneys in the bonds of the United States, of the state of New York, or of any town or village or city of such state, issued pursuant to law; and shall hold such bonds as a sinking fund for the redemption and payment of such outstanding railroad aid bonds. If a county treasurer shall unreasonably neglect to comply with this section, any taxpayer of the town, village or city having so issued its bonds may apply to the county judge of the county in which such municipal corporation is situated, for an order compelling such treas-

urer to execute the provisions of this section. Upon application of the town board of any town, the board of supervisors of the county in which said town is situated may authorize payment by the county treasurer of all moneys thus paid to him in any year by the railroads mentioned in this section, to the supervisor of such town, for its use and benefit; to be applied either to the purchase of outstanding railroad aid bonds or the payment of interest thereon, and any payment heretofore made in good faith by the treasurer of any county to any town or to the supervisor thereof, of the taxes received in any year by such treasurer, from railroad corporations in that town, is hereby validated. The county treasurer of any county in which one or more towns therein shall have issued bonds for railroad purposes, shall when directed by the board of supervisors or county judge of the county, execute and file in the office of the clerk of the county an undertaking with not less than two sureties, approved by such board or judge, to the effect that he will faithfully perform his duties pursuant to this section. The annual report of a county treasurer shall fully state, under the head of "railroad sinking fund," the name and character of all such investments made by him or his predecessors, and the condition of such fund.

§ 14. Appointment of railroad commissioners.

The county judge of any county within which is a municipal corporation having or being entitled to have railroad commissioners, on October first, eighteen hundred and ninety-two, and in which the duties imposed upon such commissioners are not fully performed, shall continue to appoint and commission, upon the application of twenty freeholders within such corporation, three persons, who shall be freeholders and resident taxpayers therein, commissioners for the purpose of performing the duties and completing the business required of them pursuant to this chapter or any law. Such commissioners shall hold their office for five years, and until others are appointed by the county judge, unless their duties shall be sooner performed, or the office shall be abolished, who shall also, in like manner, fill any vacancies that may exist therein. Such commissioners shall each receive the sum of three dollars per day for each day actually engaged in the discharge of their duties, and the necessary disbursements to be audited and paid by the usual auditing and disbursing officers of such municipal corporation. A majority of such commissioners, at a meeting of which all have notice, shall constitute a quorum.

§ 15. Oath and undertaking of commissioners.

Before entering upon their duties such commissioners shall take the constitutional oath of office, and make and file with the county clerk of their county, their joint and several undertaking, with two or more sureties to be approved by the county judge of their county, to the effect that they will faithfully discharge their duties as such commissioners, and truly keep, pay over and account for all moneys belonging to such corporation coming into their hands.

§ 16. Abolition of office of railroad commissioners.

The board of supervisors of any county may, upon the application of the auditing board of any municipal corporation therein, by resolution, abolish

the office of railroad commissioners of such municipal corporation, and direct the manner of the transfer of their duties to the supervisor of the town, or the treasurer of the municipal corporation other than a town, and upon his compliance with such directions, such transferee shall be vested with all the powers conferred upon such railroad commissioners and subject to all the duties imposed upon them.

§ 17. Exchange or sale of railroad stock and bonds.

The railroad commissioners or officers of a municipal corporation, having the lawful charge and control of any railroad stock or bonds, for or in payment, of which the bonds of such municipal corporation have been lawfully issued in aid of such railroad corporation, may exchange the stock or bonds of such railroad corporation for and in payment of such bonds, or the new substituted bonds of such municipal corporation, when such exchange can be made for not less than the par value of the stocks or bonds so held by them. If they can not make such exchange they may sell such stocks or bonds at not less than par; but they may, on the application and with the approval of the governing board of the municipal corporation owning such stock or bonds, exchange, sell or dispose of such stock or bonds, at the best price and upon the best terms obtainable, for the municipal corporation they represent, and shall execute to the purchaser the necessary transfers therefor. All moneys received for any stock or bonds shall only be applied to the payment and extinguishment of the bonds of the municipal corporation, lawfully issued in aid of any such railroad, or substituted therefor; except that if the bonds so issued or substituted have all been paid, or the moneys so realized shall be more than sufficient to pay them in full, and all the costs and expenses of the sale, such proceeds or balance thereof shall be paid by the officers making the sale, to the supervisor of the town, or the treasurer of the municipal corporation, and applied to such lawful uses as the governing board of the municipal corporation, entitled to the same, may direct. The provisions of this section shall apply to all such commissioners or officers of a municipal corporation elected or appointed or acting under the provisions of any special act, and the authority hereby conferred shall not be limited by the provisions of any such special act.

§ 18. Annual report of commissioners and payment of bonds.

The railroad commissioners of a municipal corporation, having in charge the moneys received and collected, and who are responsible for the payment of the interest of the bonds lawfully issued by such municipal corporation, in aid of railroads, shall annually report to the governing board of the municipal corporation, the total amount of the municipal indebtedness of the municipal corporation they represent, upon such bonds or such new bonds substituted therefor, the date of the bonds and when payable, the rate of interest thereon, the acts under which they were issued, the amount of principal and interest that will become due thereon before the next annual tax levy and collection of taxes for the next succeeding year, and the amount in their hands applicable to the payment of the principal or interest thereon. Each year such governing board shall levy and collect of the municipal corporation sufficient money to pay such principal and interest, as the same shall become due and payable. When collected, such moneys, with the unpaid sums on hand, shall be forthwith paid over to

such commissioners, and applied by them to the purposes for which collected or held. When paid, such bonds shall be presented by such railroad commissioners to the governing board of the municipal corporation, at least five days before the annual town meeting, village or city election, or meeting of the board of supervisors, next thereafter held, who shall cancel the same, and make and file a record thereof in the clerk's office of the municipal corporation, whose bonds were so paid or canceled.

§ 19. Accounts and loans by commissioners.

Such railroad commissioners shall present to the auditing board of the municipal corporation they represent, at each annual meeting of such board, a written statement or report, showing all their receipts and expenditures, with vouchers. They shall also loan on proper security or collaterals, or deposit in some solvent bank or banking institution, at the best rate of interest they can obtain, or invest in the bonds of the municipal corporation they represent, or in bonds of the state, or of any town, village, city or county therein, issued pursuant to law, or in the bonds of the United States, all moneys that shall come into their hands by virtue of their office, and not needed for current liabilities; and all earnings, profits or interest accruing from such loans, deposits or investments, shall be credited to the municipal corporation they represent, and accounted for in their annual settlement with the governing board thereof.

§ 20. Reissue of lost or destroyed bonds.

When any bonds lawfully issued by a municipal corporation in aid of any railroad, or in substitution for bonds so issued, shall be lost or destroyed, the railroad commissioners may issue new bonds in the place of the ones so lost or destroyed, at the same rate of interest, and to become payable at the same time, upon the owner furnishing satisfactory proof, by affidavit, of such ownership, and loss or destruction, and a written indemnity, with at least two sureties, approved as to form and sufficiency by the county judge of the county in which such municipal corporation is situated. Every new bond so issued shall state upon its face the number and denomination of the bond for which it is issued, that it is issued in the place of such bond claimed to have been lost or destroyed, that it is issued as a duplicate thereof, and that but one is to be paid. Such affidavit and indemnity, duly indorsed, shall be immediately filed in the county clerk's office.

ARTICLE 3.

§ 21. Maximum rate of interest on municipal bonds.

If in any general or special law passed before January first, nineteen hundred and eighteen, authorizing or requiring an issue of bonds by a municipal corporation, or by any department, board, commission, or officer thereof, a maximum rate of interest on the bonds to be issued thereunder be prescribed, the rate of interest on such bonds hereafter issued in pursuance of such general or special law may be fixed by the department, board, commission or officer charged by law with the duty of issuing such bonds at any rate not more than the legal rate of interest, notwithstanding the provisions of such general or special law prescribing a different maximum rate. The term "municipal corporation" as used in this section

includes a city, county, village, town, school district, sewer district, water district, highway district or any other district or territory authorized by law to issue bonds, and the term "bonds" includes bonds, corporate stock, certificates of indebtedness or any other obligation whereby a municipal corporation agrees to pay a stated sum of money. (Added by L. 1911, ch. 573, and amended by L. 1918, ch. 23, in effect March 4, 1918.)

ARTICLE 2a.

Legalizing Bonds or Proceedings for Issuance.

Section 22. Legalizing proceedings.

23. Petition.

24. Notice of presentation of petition; filing; answer.

25. Hearing.

26. Determination of court.

27. Appeal.

28. Effect of determination.

29. Definitions.

§ 23. Legalizing proceedings.

Proceedings heretofore or hereafter taken by a municipal corporation authorized by law to issue bonds, or by its officers, agents or voters, pursuant to a statute authorizing or requiring such proceedings, may be legalized and confirmed by the supreme court in the manner and with the effect provided by this article. A proceeding may be instituted hereunder for the purpose of legalizing and confirming such proceedings taken prior to the issuance and sale of such bonds, or for the purpose of legalizing and confirming such preliminary proceedings and also the issuance, sale and form of such bonds. Such a proceeding may be instituted by the officer or officers of such municipal corporation authorized or required by law to sell such bonds, or if the purpose of such proceeding also includes the legalizing and confirming of the proceedings in respect to the issuance, sale and form of such bonds, by any taxpayer of the municipal corporation or by a purchaser or holder of such bonds. Added by L. 1911, ch. 769.

§ 23. Petition.

The officer or person commencing such proceeding shall present a verified petition to a special term of the supreme court held within the judicial district in which such municipal corporation is wholly or partly situated, stating the statute under which it is proposed to issue such bonds or under which such bonds were issued, the purpose thereof, the aggregate amount of bonds proposed to be issued or issued, the time when such bonds are payable, and all proceedings that have been taken by the municipal corporation, or by its officers, agents or voters, in respect to the issuance and sale of such bonds, and praying that such court shall investigate the law and facts in relation to such proceedings and determine whether such proceedings substantially complied with the statute under which it is proposed to issue and sell such bonds, or under which such bonds were issued and sold. Such petition may also state any particular in which the petitioner deems that such proceedings may not have complied with the statute under which it is proposed to issue and sell such bonds, or under which the same were issued and sold. Added by L. 1911, ch. 769.

§ 24. Notice of presentation of petition; filing; answer.

A notice stating the time and place of the presentation of such petition and briefly describing the proceedings sought to be legalized and confirmed shall be published at least twice in a newspaper, if any, published in the municipal corporation, or if no newspaper be published therein, in a news-

paper published in the city, village or town nearest to such municipal corporation. Such publication shall be made at least twenty and not more than thirty days prior to the date of such hearing. Such notice shall also be posted in at least ten conspicuous public places in the municipal corporation. If such proceeding be instituted by a taxpayer, or a purchaser or holder of bonds which have been issued, such notice shall also be served upon the mayor of a city, the president of a village, the supervisor of a town, or the officer, board or commission authorized or required by law to sell such bonds, and upon any known purchaser or holder of such bonds. Such notice shall be so served personally or by mail at least twenty days before the date of such hearing and shall be accompanied by the petition proposed to be presented at such hearing, and at least ten days prior to such hearing such municipal corporation may serve on the petitioner a verified answer to such petition. If such proceeding be instituted by a municipal officer or officers, a copy of the petition proposed to be presented at the hearing shall be filed in the office of the officer or officers authorized or required by law to sell such bonds. At any time prior to such hearing a taxpayer of such municipality, or if such bonds have been issued, a holder or purchaser may file in such office a verified answer to such petition. Added by L. 1911, ch. 769.

§ 25. Hearing.

At the time of such hearing any taxpayer of the municipal corporation, or if such bonds have been issued, any holder or purchaser thereof may intervene and with the consent of the court be made a party thereto. Upon such hearing any party to such proceeding may appear, by counsel, and may produce and examine witnesses as to the proceedings taken in respect to the issue and sale of such bonds. Such witnesses shall be subject to cross-examination by any party appearing at such hearing. The court may appoint a referee to take testimony in respect to the proceeding for the issuance and sale of such bonds and may otherwise require the parties thereto to produce proof, by affidavit or otherwise, of any facts which may tend to enable the court to make a full and complete determination in respect to the proceedings for the issuance and sale of such bonds. Added by L. 1911, ch. 769.

§ 26. Determination of court.

If, after such hearing and investigation, such court is satisfied that the statute under which such proceedings were taken authorized bonds to be issued by the municipal corporation for the aggregate amount for which it is proposed to issue the same, or for the amount of bonds issued and sold thereunder if such bonds have been already issued and sold, and that the proceedings taken by such municipal corporation, its officers, agents or voters, prior to the issuance and sale of such bonds, or including the issuance and sale of such bonds have been already issued, substantially complied with the statute under which it is proposed to issue such bonds, or under which such bonds were issued and sold, the court may, by order, legalize and confirm the proceedings

taken prior to the issue and sale of such proposed bonds, or if such bonds have been issued, including the proceedings on the issuance and sale thereof and the form of the bonds issued thereunder, with the same force and effect as though all the provisions of law in relation to such proceedings and form had been strictly complied with. The court may determine that such statute was substantially complied with if it authorized the aggregate amount of bonds proposed to be issued or issued thereunder, that the proposition to issue such bonds was adopted at the election, if any, to which it was submitted or by the required vote of the meeting of the body or board to which it was submitted, and that such bonds, if issued and sold were sold at not less than par and at a rate of interest no greater than was authorized by the statute under which such bonds were issued, notwithstanding any irregularity or technicality in the form of proposition or resolution proposing or authorizing such issue, or in the notice of the election or of the meeting of the board or body adopting such resolution or authorization, or in the time or manner of service thereof, or in the conduct of the election or meeting at which such proposition or authorization was adopted, or in that such proposition was submitted more than once within one year or other shorter period than authorized by law, or, if such bonds have already been issued in the manner of issuance or sale thereof, or in the time or times of payment thereof, or notwithstanding any other technical or formal irregularity of like nature in such proceedings. If the court is satisfied that the proceedings for the issuance and sale of such bonds did not substantially comply with the statute under which it was proposed to issue and sell the same or under which the same were issued and sold, he may make an order accordingly specifying the particulars in which he deems that such proceedings failed to comply with such statute. Added by L. 1911, ch. 769.

§ 27. Appeal.

An appeal may be taken to the appellate division from the order of the supreme court legalizing and confirming such proceedings, or refusing to legalize and confirm the same. Such appeal must be taken within ten days after the entry of the order, by the service of the notice of appeal upon all the parties to such proceeding who appeared personally or by counsel at the hearing before the supreme court. The decision of the appellate division thereon shall be final. Added by L. 1911, ch. 769.

§ 28. Effect of determination.

If the order of the supreme court legalizes and confirms such proceedings, upon the expiration of the time to appeal therefrom if no appeal be taken, or upon the entry of the final order of the appellate division confirming such order of the supreme court, such proceedings shall be deemed legalized and confirmed. If such proceeding was instituted to legalize and confirm proceedings prior to the issuance and sale of such bonds, the officer or officers of such municipal corporation authorized to issue such bonds may issue and sell

the same accordingly, and the validity of such bonds shall not thereafter be in any manner questioned by reason of any defect or irregularity in such preliminary proceedings, and notwithstanding any such irregularity or defect shall be binding and legal obligations upon the municipal corporation issuing and selling the same. If such proceeding was instituted to legalize and confirm the proceedings for the issue and sale of bonds that were issued and sold at the time such proceeding was instituted, such bonds shall be valid and binding obligations upon the municipal corporation, in like manner, and the validity thereof shall not in any manner be questioned by reason of any irregularity or defect in the proceedings for the issue and sale of such bonds, or in the form thereof. Added by L. 1911, ch. 769.

§ 29. Definitions.

The term "municipal corporation" as used in this article includes a city, county, village, town, school district, sewer district, water district, lighting district or any other district or territory authorized by law to issue bonds.

The term "bonds" as used in this article includes bonds, corporate stock, certificates of indebtedness or any other obligations whereby a municipal corporation agrees to pay a stated sum of money. Added by L. 1911, ch. 769

ARTICLE 8.

Report of Financial Condition.

Section 30. Reports.

31. Form of reports.
32. Comptroller to furnish blank forms.
33. Accounts of fiscal officers to be examined.
34. Chief accountant and examiners of accounts.
35. Powers and duties of examiners.
36. Uniform system of accounts.
37. Comparison of statistics.
38. Expenses of examination.

§ 30. Reports.

Every county, other than those comprising the city of New York, every city of the second and third classes, every incorporated village and every town shall annually make a report of its financial condition to the comptroller. Such reports shall be made by the treasurers of the various counties, the comptrollers of cities of the second and third classes, the treasurers of village and the supervisors of towns, but if, for any reason, the comptroller shall deem it necessary that additional information be furnished by any other officer of the municipalities named herein, he may require such additional information from such other officer in such form as he may deem necessary to carry into effect the purposes of this article. All reports shall be duly verified by the oath of the officer making the same and shall be filed with the comptroller within sixty days after the close of the fiscal year of such municipality. Every such officer shall also, within sixty days after the expiration of his term of office, or his resignation or removal therefrom, make a report to the comptroller of the financial condition of such municipal corporation on the date of the expiration of his term of office, or his resignation or removal from office, as the case may be. The refusal or willful neglect of such officer to file a report as herein prescribed shall be a misdemeanor.

Amended by L. 1911, Ch. 544. In effect June 29, 1911.

§ 31. Form of reports.

The reports shall be in the form to be prescribed by the comptroller and shall contain:

1. A statement of the receipts of such municipality from all sources and of all accounts or revenue which may be due and uncollected at the close of the fiscal year.

2. A statement of the disbursements for all branches of the municipal government during the fiscal year.

3. A detailed statement of the indebtedness of the municipality at the close of the fiscal year, the provisions made for the payment thereof, together with the purposes for which it was incurred.

4. A statement of the costs of ownership and operation and of the income of each and every public service industry owned, maintained or operated by any such municipal corporation.

5. Such further or more specific information in relation to the cost of any branch of the municipal service or any improvement therein as may be required by the comptroller.

§ 32. Comptroller to furnish blank forms.

The comptroller shall annually furnish to the officers required to make reports by the provisions of this article, at least ninety days before the time such reports are required to be filed with him, printed blanks and forms on which shall be indicated the information required, together with suitable printed instructions for filling out the same.

§ 33. Accounts of fiscal officers to be examined.

The comptroller shall cause the accounts of all fiscal officers of each such municipal corporation to be inspected and examined by one or more examiners to be appointed by him at such periods as he shall deem necessary. On every such examination inquiry shall be made as to the financial condition and resources of the municipal corporation, and into the method and accuracy of its accounts. He may also, upon the request or with the consent of the commissioner of education, cause like inspections and examinations to be made by such examiners so appointed, of the accounts of the school authorities or the school officers of a city or union free school district, having a population of five thousand or more. Whenever an examination is made of the accounts of the school authorities or school officers of a city or of such union free school district, the comptroller shall transmit to and file with the fiscal officer or clerk of the school authorities of the city or school district examined and with the commissioner of education copies of the report of the examination made.

Amended by L. 1917, Ch. 307, in effect May 2, 1917.

§ 34. Chief accountant and examiners of accounts.

The comptroller shall appoint a chief accountant who, under his direction, shall be charged with the preparation of the forms of the reports required by the provisions of this article, the compilation of the comparative statistics and the inspection and examination of municipal accounts. He shall also appoint not to exceed fifteen examiners, who shall be charged with the duty of inspecting and examining the accounts of such municipal corporations. The chief accountant shall receive a salary of not to exceed two thousand five hundred dollars and his necessary traveling and other actual expenses; the examiners of accounts shall each receive when employed not less than five nor more than fifteen dollars a day and their necessary traveling expenses.

Amended by L. 1910, ch. 301, in effect May 16, 1910.

§ 35. Powers and duties of examiners.

The comptroller, the chief accountant and each examiner of accounts shall have power to examine into the financial affairs of every municipal corporation enumerated herein and to administer an oath to any person whose testimony may be required, on any such examination, and to compel the appearance and attendance of such person for the purpose of any such examination and investigation, and the production of books and papers. But no such person shall be compelled to appear or be examined elsewhere than within such municipality. Wilful false swearing in such examination shall be perjury and shall be punishable as such. A report of such examination shall be made and shall be a matter of record in the office of the comptroller and in the office of the chief fiscal officer of the municipality, each of which shall be open to public inspection.

§ 36. Uniform system of accounts.

The comptroller may formulate and prescribe a system of keeping accounts, which system shall be uniform for each class of municipal corporations specified in section thirty of this chapter, and from time to time, whenever he shall deem it necessary, direct the instalment of such system by any one or more of the municipal corporations comprising such class. Any officer of such municipal corporation who shall refuse or wilfully neglect to comply with such direction of the comptroller within such reasonable time as the comptroller may prescribe shall be guilty of a misdemeanor. The comptroller, may, however, and upon good and sufficient cause shown shall, extend such prescribed time as may be reasonable and necessary. The expense of installing a system of keeping accounts in pursuance of this section shall be paid out of such appropriation as shall be made to carry this article into effect.

§ 37. Comparison of statistics.

The substance of the reports required by the provisions of this article shall be arranged by the comptroller in such form as shall indicate the comparative receipts from the various sources of revenue and the comparative costs of the several branches of government in the specified municipal corporations, and shall be published in an annual statement of comparative statistics, which shall be issued for each class of municipal corporations at

the expense of the state as a public document and shall be submitted by the comptroller to the legislature at each regular session. Copies thereof shall also be furnished by him to each municipality named therein.

§ 38. Expenses of examination.

The expenses of examining the public accounts of any municipal corporation shall be paid out of such appropriation as shall be made to carry the provisions of this article into effect.

ARTICLE 4.

Negligence and Malfeasance of Public Officers; Taxpayers' Remedies.

Section 50. Cause of action not barred.

- 51. Prosecution of officers for illegal acts.
- 52. Holder of bond may bring action.
- 53. Municipal corporation may bring action against its officers.
- 54. Statute of limitation; order of arrest.
- 55. Appeals.

§ 50. Cause of action not barred.

A cause of action in law or equity against any municipality in the state of New York, or its proper officers, arising from the action of such municipality in derogation of its previous grant or covenant, where a previous action shall not have succeeded, in whole or in part, owing to the failure of the said municipality to produce or prove certain written evidence, which was essential to the plaintiff's claim, shall not be barred by the operation of the statutes limiting the time for the enforcement of civil remedies in favor of the successor in interest to the person entitled to any benefit or damages by reason of such grant, covenant or action of said municipality.

§ 51. Prosecution of officers for illegal acts.

All officers, agents, commissioners and other persons acting, or who have acted, for and on behalf of any county, town, village or municipal corporation in this state, and each and every one of them, may be prosecuted, and an action may be maintained against them to prevent any illegal official act on the part of any such officers, agents, commissioners or other persons, or to prevent waste or injury to, or to restore and make good, any property, funds or estate of such county, town, village or municipal corporation by any person or corporation whose assessment, or by any number of persons or corporations, jointly, the sum of whose assessments shall amount to one thousand dollars, and who shall be liable to pay taxes on such assessment in the county, town, village or municipal corporation to prevent the waste or injury of whose property the action is brought, or who have been assessed or paid taxes therein upon any assessment of the above-named amount within one year previous to the commencement of any such action. Such person or corporation upon the commencement of such action, shall furnish a bond to the defendant therein, to be approved by a justice of the supreme court or the county judge of the county in which the action is brought, in such penalty as the justice or judge approving the same shall direct, but not less than two hundred and fifty dollars, and to be executed by any two of the plaintiffs, if there be more than one party plaintiff, providing said two parties

plaintiff shall severally justify in the sum of five thousand dollars. Said bond shall be approved by said justice or judge and be conditioned to pay all costs that may be awarded the defendant in such action if the court shall finally determine the same in favor of the defendant. The court shall require, when the plaintiffs shall not justify as above mentioned, and in any case may require two more sufficient sureties to execute the bond above provided for. Such bond shall be filed in the office of the county clerk of the county in which the action is brought and a copy shall be served with the summons in such action. If an injunction is obtained as herein provided for, the same bond may also provide for the payment of the damages arising therefrom to the party entitled to the money, the auditing, allowing or paying of which was enjoined, if the court shall finally determine that the plaintiff is not entitled to such injunction. In case the waste or injury complained of consists in any board, officer or agent in any county, town, village or municipal corporation, by collusion or otherwise, contracting, auditing, allowing or paying, or conniving at the contracting, audit, allowance or payment of any fraudulent, illegal, unjust or inequitable claims, demands or expenses, or any item or part thereof against or by such county, town, village or municipal corporation, or by permitting a judgment to be recovered against such county, town, village or municipal corporation; or against himself in his official capacity, either by default or without the interposition and proper presentation of any existing legal or equitable defenses, or by any such officer or agent, retaining or failing to pay over to the proper authorities any funds or property of any county, town, village or municipal corporation, after he shall have ceased to be such officer or agent, the court may, in its discretion, prohibit the payment or collection of any such claims, demands, expenses or judgments, in whole or in part, and shall enforce the restitution and recovery thereof, if heretofore or hereafter paid, collected or retained by the person or party heretofore or hereafter receiving or retaining the same, and also may, in its discretion, adjudge and declare the colluding or defaulting official personally responsible therefor, and out of his property, and that of his bondsmen, if any, provide for the collection or repayment thereof, so as to indemnify and save harmless the said county, town, village or municipal corporation from a part or the whole thereof; and in case of a judgment the court may, in its discretion, vacate, set aside and open said judgment, with leave and direction for the defendant therein to interpose and enforce any existing legal or equitable defense therein, under the direction of such person as the court may, in its judgment or order, designate and appoint. All books of minutes, entry or account, and the books, bills, vouchers, checks, contracts or other papers connected with or used or filed in the office of, or with any officer, board or commission acting for or on behalf of any county, town, village or municipal corporation in this state are hereby declared to be public records, and shall be open, subject to reasonable regulations to be prescribed by the officer having the custody thereof, to the inspection of any taxpayer. This section shall not be so construed as to take away any right of action from any county, town, village or municipal corporation, or from any public officer, but any right of action now existing, or which may hereafter exist in favor of any county, town, village or municipal corporation, or in favor of any officer thereof, may be enforced by action or otherwise by the persons hereinbefore authorized to prosecute and maintain actions; and whenever by the provisions of this sec-

tion an action may be prosecuted or maintained against any officer or other person, his bondsmen, if any, may be joined in such action or proceeding and their liabilities as such enforced by the proper judgment or direction of the court; but any recovery under the provisions of this article shall be for the benefit of and shall be paid to the officer entitled by law to hold and disburse the public moneys of such county, town, village or municipal corporation, and shall, to the amount thereof, be credited the defendant in determining his liability in the action by the county, town, village or municipal corporation or public officer. The provisions of this article shall apply as well to those cases in which the body, board, officer, agent, commissioner or other person above named has not, as to those in which it or he has jurisdiction over the subject-matter of its action.

§ 52. Holder of bond may bring action.

Any bona fide purchaser and holder of any bonds or other obligations for the payment of money payable to bearer and transferable by delivery, and any such purchaser and holder of any interest bearing coupon or obligation originally attached to such bonds, which said bonds or coupon shall have been issued or put in circulation by means of the misfeasance, malfeasance or negligence of any public officer, of any of the civil or municipal divisions of this state, whose right of recovery or cause of action upon any such bond or coupon has been or shall be determined by the judgment of a court of competent jurisdiction in any suit or action, or who has been or shall be a privy to such suit or action, may within three years after the determination of said right of recovery and cause of action begin an action against such officer and recover all damages which said purchaser, holder or privy shall have suffered because of the misfeasance, malfeasance or negligence of such public officer.

§ 53. Municipal corporation may bring action against its officers.

Any municipal corporation within this state, or any civil division of this state, which has been or shall be compelled to pay any negotiable bond, or any coupon originally attached to such bond, by the judgment of a court of competent jurisdiction, because of the misfeasance, malfeasance or negligence of any public officer or agent of such municipal corporation or civil division, may within three years from the time when such payment shall have been compelled as aforesaid, begin an action against any such officer in any court of competent jurisdiction and recover the amount so paid with interest from the time of such payment.

§ 54. Statute of limitation; order of arrest.

No limitation of the time for commencing an action shall affect any of the actions hereinbefore mentioned except as herein provided, and in such action an order of arrest and an execution against the person of the defendant may be issued in the manner and form provided by the code of civil procedure against a person who shall have wrongfully misappropriated money held by him in a fiduciary capacity.

§ 55. Appeals.

In any suit or action upon any coupon hereinbefore mentioned, or upon any bonds hereinbefore mentioned, or to recover any damages hereinbefore

mentioned, any party to such action shall have and is hereby granted a right of appeal, to the general term or appellate division of the supreme court from the judgment of any trial court, or to the court of appeals, from any judgment of the general term or of the appellate division of the supreme court, although the amount in controversy in such action has been or may be less than five hundred dollars. Appeals from any inferior court to any appellate court including an appeal to the court of appeals although the amount in controversy may be less than five hundred dollars, from any judgment in any suit or action to recover against any municipal corporation or civil division of this state upon any negotiable bonds or upon any coupon originally attached thereto, issued or put in circulation by the agents or officers of such municipal corporation or civil division of this state, may be taken by any person who has been or shall be bound as a privy by such judgment within sixty days after such privy shall have been served by any of the parties to such civil action, with a copy of the said judgment and with a written notice of the entry thereof, and said appeal may be taken in the name of such party without entering an order of substitution as such party by said person so bound as a privy, upon his giving the security and serving the notices of appeal prescribed by the code of civil procedure concerning an appeal by a party to such an action, and also upon giving to the party in whose name such an appeal is taken an undertaking with two sufficient sureties conditioned in the penal sum of five hundred dollars, to save such party to such action in whose name such appeal shall be taken harmless of and from all costs and disbursements which may be recovered against him upon such appeal, which said undertaking shall be approved as to its form and as to the sufficiency of the sureties thereon by justices of the supreme court. Said appeal when so taken by said privy shall be conducted and determined in the same manner as if taken by said party of the said action except as herein otherwise provided.

ARTICLE 5.

Powers, Limitations and Liabilities.

Section 70. Payment of judgments against municipal corporation.

- 71. Liability for damages by mobs and riots.
- 72. Acquisition of lands for erection of monuments.
- 72a. Acquisition and development of forest lands.
- 73. Cities and villages may hold property in trust for certain purposes.
- 74. Condemnation of real property.
- 75. Limitation on acquisition of water rights in Dutchess county.
- 76. Limitation on acquisition of water rights in Westchester and Putnam counties.
- 77. Leases of public buildings to Grand Army posts.
- 77a. Military equipment for local military organizations and to provide for emergencies and the support of persons dependent upon men enlisted in the federal service, national guard or naval militia during the present war.
- 77b. Convention expenses of municipal officers and employees.
- 78. Insurance of property.
- 79. Free public libraries.
- 80. Discrimination against non-residents.
- 81. Peddling and hawking farm produce.
- 82. Levy to pay a final judgment; to be in addition to amount authorized by law; money to be paid to judgment creditor.
- 83. Limitation as to amount of money to be raised; special provision in New York city.

- 84. Refunding illegal assessments.
- 85. Licenses to conduct transient retail business.
- 85a. Taxation of transient merchants.
- 86. Contracts not to assign contracts with municipality without its consent.
- 86a. Salary or earnings of municipal officer or employee.
- 86b. Retained percentages may be withdrawn.
- 87. Support and maintenance of charitable and other institutions.
- 88. Separate specifications for certain contract work.
- 89. Payment of debts of illegal corporations.
- 90. Workmen's compensation insurance on public works.

§ 70. Payment of judgments against municipal corporation.

When a final judgment for a sum of money shall be recovered against a municipal corporation, and the execution thereof shall not be stayed pursuant to law, or the time for such stay shall have expired, the treasurer or other financial officer of such corporation having sufficient moneys in his hands belonging to the corporation not otherwise specifically appropriated, shall pay such judgment upon the production of a certified copy of the docket thereof.

§ 71. Liability for damages by mobs and riots.

A city or county shall be liable to a person whose property is destroyed or injured therein by a mob or riot, for the damages sustained thereby, if the consent or negligence of such person did not contribute to such destruction or injury, and such person shall have used all reasonable diligence to prevent such damage, shall have notified the mayor of the city, or sheriff of the county, of a threat or attempt to destroy or injure his property by a mob or riot, immediately upon acquiring such knowledge, and shall bring an action therefor within three months after such damages were sustained. A mayor or sheriff receiving notification of a threat or attempt to destroy or injure property by a mob or riot shall take all lawful means to protect such property; and if he shall neglect or refuse, the person whose property shall be destroyed or injured, may elect to bring his action for damages against such officer instead of the city or county.

§ 72. Acquisition of lands for erection of monuments.

The governing board of a village or town, or the trustees of a monument association, may acquire not to exceed three acres of land, for the erection of a soldiers' monument, or a monument or other structures as a memorial of some distinguishing or important event in the history of the state or nation, and for laying out such lands as a public park or square, if such lands are vacant or have buildings thereon not exceeding two thousand five hundred dollars in value, and if a judge of the county, or a justice of the supreme court of the district, in which such memorial is to be erected, shall give his written approval of the acquisition of such lands for such purpose.

§ 72a. Acquisition and development of forest lands.

The governing board of a county, town or village may severally acquire for such county, town or village, by purchase, gift, lease or condemnation, and hold as the property of such municipality, tracts of land having forests or tree growth thereon, or suitable for the growth of trees, and may appropriate therefor the necessary moneys of the county, town or village for which the lands are acquired. Such lands shall be under the management and con-

trol of such board and shall be developed and used for the planting and rearing of trees thereon and for the cultivation thereof according to the principles of scientific forestry, for the benefit and advantage of the county, town or village. The determination of any such board to acquire lands under the provisions of this section shall be by resolution; but the question of the final adoption of such resolution shall be taken up by the board only after public notice thereof has been published for at least two weeks, as follows: If it be a resolution of a board of supervisors, the publication shall be made in the newspapers in which the session laws and concurrent resolutions are required to be published; if it be a resolution of a town board or of a board of trustees of a village, the publication shall be made in a newspaper published in the town or village, respectively. The board shall give a hearing to all persons appearing in support of or in opposition to such proposed resolution. If it be determined to purchase such lands the moneys necessary therefor may be provided as follows: If the acquisition be by a county, the board of supervisors may cause such moneys to be raised by taxation and levied and collected as other county taxes or may borrow money therefor on the credit of the county by the issuance and sale of county bonds in the manner provided by law for the issuance and sale of other county obligations; if the acquisition be by a town, the moneys necessary therefor shall constitute a town charge and be raised by taxation as other town charges, or, the town board may in its discretion, cause town bonds to be issued and sold in the manner provided by law for the issuance and sale of town bonds, under the town law, to pay judgments; if the acquisition be by a village, the moneys therefor may be raised by taxation, as other village taxes, or by the issuance and sale of village bonds in the manner provided by the laws governing such village relating to village obligations, after the adoption of a resolution therefor by the board of trustees, without other authorization. All revenues and emoluments from lands so acquired shall belong to the municipality and be paid to its chief fiscal officer for the purposes of such municipi-

pality and in reduction of taxation therein. Such forest lands shall be subject to such rules and regulations as such governing board of the municipality shall prescribe; but the principal object to be conserved in the maintenance of such lands shall be the sale of forest products in aid of the public revenues and the protection of the water supply of the municipality. Such lands or portions thereof may be sold and conveyed, or leased, if a resolution therefor be adopted by the affirmative vote of two-thirds of all the members of such governing board; but no such resolution directing an absolute conveyance shall be effectual unless adopted after a public hearing, held upon notice given in the manner required in the case of a resolution to acquire such lands. A deed of conveyance or lease of such lands, when authorized as aforesaid, shall be executed by the county treasurer of the county, supervisor of the town or president of the village by which the conveyance or lease is made. Moneys may be appropriated for the care and maintenance of such lands and the development and use of forests thereon annually, by the county, town or village, respectively, and the amount thereof raised by taxation in the same manner that other expenditures of such county, town or village are provided for by law.

Added by L. 1912, ch. 74. In effect Mar. 26, 1912.

§ 73. Cities and villages may hold property in trust for certain purposes.

Real and personal estate may be granted and conveyed to the corporation of any city or village of this state, to be held in trust for any purpose of education, or the diffusion of knowledge, or for the relief of distress; or for parks, gardens, or other ornamental grounds, or grounds for the purposes of military parades and exercise, or health and recreation, within or near such incorporated city or village, upon such conditions as may be prescribed by the grantor or donor, and agreed to by such corporation; and all real estate so granted or conveyed to such corporation, may be held by the same, subject to such conditions as may be prescribed and agreed to as aforesaid.

§ 74. Condemnation of real property.

A municipal corporation authorized by law to take and hold real property for the uses and purposes of the corporation, may, if it is unable to agree with the owners for the purchase thereof, acquire title to such property by condemnation.

§ 75. Limitation on acquisition of water rights in Dutchess county.

Notwithstanding the provisions of any general or special law, a municipal or other corporation shall not have power to acquire by condemnation for the purpose of increasing or improving its water supply, any stream or water, situated outside the boundaries of such municipal corporation, that flows through the town of Fishkill, Wappingers or Poughkeepsie into the Hudson river, which stream or water affords the chief source of power to, or is necessary in the process of manufacturing, washing or dyeing in, a mill situated in a city or village within the county of Dutchess, the inhabitants whereof are chiefly dependent on such mill for employment and support.

§ 76. Limitation on acquisition of water rights in Westchester and Putnam counties.

Notwithstanding the provisions of any general or special law, a municipal or other corporation not situated within the county of Westchester or the county of Putnam shall not have power to acquire by condemnation, for the purpose of increasing or improving the water supply of any such corporation, or for supplying the inhabitants thereof with water, any lands, easements, streams of water, or water rights within the county of Westchester or the towns of Carmel and Putnam Valley in the county of Putnam, except that this section shall not apply to the contemplated reservoir known as the Cross river reservoir, nor to the contemplated reservoir at or near Croton falls, nor to the contemplated acquisition of land in the vicinity of Rye lake; nor shall this section operate to prevent the city of New York from acquiring real estate in said counties necessary for the purpose of constructing, maintaining and operating aqueducts, dams, reservoirs, culverts, sluices, canals, bridges, tunnels, pumping works, blow-offs, shafts, filters and appurtenances for the purpose of conveying to the city of New York and to the said counties, water from sources outside of the said counties, or for the purpose of connecting supplies of water already established within said counties.

Amended by L. 1909, ch. 240, in effect April 22, 1909.

§ 77. Leases of public buildings to Grand Army posts.

A municipal corporation may lease, for not exceeding five years, to a post or posts of the Grand Army of the Republic, or other veteran organization of honorably discharged union soldiers, sailors or marines, a public building or part thereof, belonging to such municipal corporation, except school-houses in actual use as such, without expense, or at a nominal rent, fixed by the board or council having charge of such buildings and provide furniture and furnishings, and heat, light and janitor service therefor, in like manner.

Amended by L. 1917, ch. 583, in effect May 21, 1917.

§ 77-a. Military equipment for local military organizations and to provide for emergencies and the support of persons dependent upon men enlisted in the federal service, national guard or naval militia during the present war.

A county, city, town or village may provide arms, uniforms and equipments for military organizations raised within the municipality, and for the purposes of security, defense, mobilization of resources and emergency aid during the continuing of the present war and may, in its discretion, provide for the support of any person or persons residing in such municipality who may be dependent for support upon a man enlisted in the federal service, national guard or naval militia. The governing board may appropriate necessary moneys therefor and provide the same by taxes to be levied upon the taxable property of the municipality in the same manner as other municipal taxes. Such board may borrow the amount of any such appropriation upon certificates of indebtedness, one-half of which shall be payable within two years and the remaining half part within four years from date of issue.

Added by L. 1917, ch. 235, in effect April 20, 1917.

§ 77-b. Convention expenses of municipal officers and employees.

The governing board of any municipal corporation, except of a city of the first class or of a county contained wholly within a city of that class, may by a majority vote of its members, authorize any one or more of its officers, or either the executive head or deputy of a department, or the executive head of a bureau, to attend an official or unofficial convention of municipal officers if believed to be of benefit to the municipality. Such authorization must be by resolution adopted prior to such attendance, duly entered in the record of the proceedings of the board. All sums actually and necessarily expended by any person so authorized to attend a convention, for railroad fare and hotel expenses, shall be a charge against his or her municipality, and the amount thereof shall be audited, allowed and paid in the same manner as are other claims against such municipality. No such person shall be entitled to any compensation for the time spent in attending such a convention, except that no deduction shall be made from the salary of a person so attending because of such attendance.

Added by L. 1918, ch. 637, in effect May 13, 1918.

§ 78. Insurance of property.

Public officers having by law the care and custody of the public buildings and other property of a municipal corporation, may insure the same at the expense and for the benefit of such corporation.

§ 79. Free public libraries.

Any municipal corporation may establish and maintain a free public library or museum in accordance with the library provisions of sections ten hundred and twenty-seven to ten hundred and forty-four, both inclusive of education law.

§ 80. Discrimination against non-residents.

Any restriction or regulation imposed by the governing board of a municipal corporation upon the inhabitants of any other municipal corporation within this state, carrying on or desiring to carry on any lawful business or calling within the limits thereof, which shall not be necessary for the proper regulation of such trade, business or calling, and shall not apply to citizens of all parts of the state alike, except ordinances or regulations in reference to traveling circuses, shows and exhibitions, shall be void.

§ 81. Peddling and hawking farm produce.

The governing board of a municipal corporation shall not by ordinance or otherwise regulate or prohibit the pursuit or exercise of hawking and peddling farm produce except hay and straw within the limits of any such municipal corporation, if such farm produce is hawked or peddled by the producer thereof, or his servants or employees; nor shall the governing board

of any such municipal corporation pass an ordinance requiring such producer of farm produce to secure a license for peddling and hawking such farm produce within the limits of such municipal corporation. Nothing contained herein shall affect any pending action or proceeding to recover penalties imposed for violations of existing ordinances and regulations. Nothing in this section shall be construed to permit wagons from which farm produce is sold to stand in front of stores or private residences for a longer time than may be necessary for the sale and delivery of produce purchased by the occupants of such stores or residences; nor to permit the congregating of such wagons upon any street or thoroughfare not set apart by the municipality as a public market for the sale of farm produce. This section shall not apply to cities of the first class.

§ 82. Levy to pay a final judgment; to be in addition to amount authorized by law; money to be paid to judgment creditor.

If a final judgment for a sum of money, or directing the payment of money shall have been, or shall hereafter be recovered against any county, town, city or incorporated village within this state, and the same remains, or shall hereafter remain unpaid, and the execution thereof is not, or shall not be stayed as required by law, or if so stayed, the stay has expired, or shall hereafter expire, it shall be the duty of the board of supervisors, if the judgment is, or shall be, recovered against a county or town, or of the common council of the city, or the board of trustees of the village, if the judgment is, or shall be, recovered against a city or an incorporated village, and the said board of supervisors, common council or board of trustees is hereby empowered to assess, levy, and cause to be collected at the same time and in like manner as other moneys for the necessary expenses of the county, town, city or village, as the case may be, are then next thereafter to be assessed, levied and collected, and in addition to the moneys now authorized by law to be assessed, levied and collected for that purpose, a sum of money sufficient to pay the said judgment with the interest thereupon, and the fees and expenses chargeable by law upon the execution, if any, issued to collect the same. The moneys so assessed and levied as soon as collected and paid to the proper receiving and disbursing officer, or so much thereof as may be necessary, shall, from time to time, be paid by him to the judgment creditor, administrator or assignee, or other person entitled to receive the same by reason of the said judgment, without any deduction for his fees or commissions.

§ 83. Limitation as to amount of money to be raised; special provision in New York City.

No restriction or limitation imposed by law as to the sum to be raised in any year in any city or village shall apply to the moneys to be raised for the purposes specified in the last preceding section; but the said moneys shall be raised in addition to any sum so restricted or limited.

In the city of New York the powers and duties devolved upon the common council of a city by section eighty-two of this chapter shall be exercised by the board of estimate and apportionment.

§ 84. Refunding illegal assessments.

Whenever an assessment for a local improvement has been annulled by the judgment or order of any court any sum of money which has been heretofore or shall be hereafter paid thereon, may be refunded with interest from the time of such payment. If not so refunded within one year, from the time of such judgment or order annulling such assessment, an action may be maintained to recover such sum with interest thereon.

§ 85. Licenses to conduct transient retail business.

No person whether acting as principal or as agent for another, shall conduct a transient retail business in any store in any city of the third class, village or town of this state for the sale of goods which shall be represented or advertised as a bankrupt stock, or as assigned stock, or as goods damaged by fire, water or otherwise, or by any such like representation or device, without first taking out a license therefor from the mayor of such city, president of such village or the supervisor of such town. The amount of the fee for such license in any city shall be fixed by resolution duly passed by the board of aldermen or common council, and in a village by resolution duly passed by the board of trustees of such village; and in a town by resolution of the town board of such town. Such fee shall not be less than twenty-five dollars nor more than one hundred dollars per month in a city or an incorporated village, and not less than ten dollars nor more than fifty dollars per month in a town. No such license shall be issued for a less period than one month and it shall be renewed monthly during the continuance of such business. The sum paid as license fees shall, in a city or village, be paid to the treasurer of such city or village, and in a town to the supervisor thereof, to be used for city, village or town purposes.

Any person as principal or agent conducting a transient retail business as described in this section, without obtaining a license therefor, shall be guilty of a misdemeanor and upon conviction thereof shall be fined a sum of not less than one hundred dollars nor more than two hundred dollars, and in default of the payment thereof shall be imprisoned for a period of not more than sixty days.

§ 85a. Taxation of transient merchants.

The legislative body of a city, the town board of a town or the board of trustees of a village has power to provide that a tax shall be levied upon all persons or corporations conducting transient retail business therein, and may provide for the collection of such tax by requiring a permit and bond, cash deposit or other security before the commencement of business by such persons or corporations. Such tax shall be based upon the gross amount of sales and shall be at the same rate as other property is taxed for the year in such city, town or village. If at the time such tax becomes due and payable, the tax rate for the current year of such city, town or village has not been fixed, the same shall be estimated by the assessors thereof. An ordinance or resolution providing for a tax hereunder may require verified reports to be filed from time to time relating to stock and sales, and may make such further requirements as may be necessary in order to determine the amount of such tax, and to provide for the collection thereof. A transient business is one conducted in a store, hotel, house, building or structure for the sale at retail of goods, wares or merchandise, excepting food products, and which is intended to be conducted for a temporary period of time and not permanently. If the place in which a business is conducted is rented or leased for a period of two months or less, such fact shall be presumptive evidence that the business carried on therein is a transient business. Any person or corporation failing to pay said tax, or failing to obey the provisions of an ordinance or resolution adopted hereunder, shall be guilty of a misdemeanor.

Added by L. 1917, ch. 199, in effect April 17, 1917.

§ 86. Contractors not to assign contracts with municipality without its consent.

A clause shall be inserted in all specifications or contracts hereafter made or awarded by any municipal corporation, or any public department or official thereof, prohibiting any contractor, to whom any contract shall be let, granted or awarded, as required by law, from assigning, transferring, conveying, subletting or otherwise disposing of the same, or of his right, title or interest therein, or his power to execute such contract to any other person, company or corporation, without the previous consent in writing of the department or official awarding the same.

If any contractor, to whom any contract is hereafter let, granted or awarded, as required by law, by any municipal corporation in the state, or by any public department or official thereof, shall, without the previous written consent specified in the first paragraph of this section, assign, transfer, convey, sublet or otherwise dispose of the same, or his right, title or interest therein, or his power to execute such contract, to any other person, company or other corporation, the municipal corporation, public department, or official as the case may be, which let, made, granted or awarded said contract shall revoke and annul such contract, and the municipal corporation, public department or officer, as the case may be, shall be relieved and discharged from any and all liability and obligations growing out of said contract to such contractor, and to the person, company, or corporation to whom he shall assign, transfer, convey, sublet or otherwise dispose of the same, and said contractor, and his assignee, transferee, or sub-lessee, shall forfeit and lose all moneys, theretofore earned under said contract except so much as may be required to pay his employees; provided, that nothing herein contained shall be construed to hinder, prevent or affect an assignment by such contractor for the benefit of his creditors, made pursuant to the statutes of this state.

§ 86a. Salary or earnings of municipal officer or employee.

No assignment of, or power of attorney to collect or other instrument affecting, the whole or any part of his salary or earnings by an officer or employee of any municipal corporation, or subdivision thereof, unless approved in writing by the head of the department, board, body or office in which such officer or employee is employed, shall in any way operate to prevent the payment of such salary or earnings directly to such officer or employee. In the event of the payment of such salary or earnings directly to such officer or employee, notwithstanding the existence of an assignment of, or power of attorney to collect or other instrument affecting, the whole or part thereof, not approved by the head of the department, board, body or office in which such officer or employee is employed, no person shall have any cause of action therefor against such municipal corporation or subdivision thereof for the recovery of any moneys by virtue of such unapproved assignment, power of attorney to collect or other instrument.

Added by L. 1914, Ch. 164, in effect April 6, 1914.

§ 86b. Retained percentages may be withdrawn.

A clause may be inserted in any contract hereafter made or awarded by any municipal corporation, or any public department or official thereof, providing

that the contractor may, from time to time, withdraw the whole or any portion of the amount retained from payments to the contractor pursuant to the terms of the contract, upon depositing with the comptroller or disbursing officer of the municipality, corporate stock or bonds of the municipality of a market value equal to the amount so withdrawn. The said clause may further provide that the municipality shall, from time to time, collect all interest or income on the stock or bonds so deposited, and shall pay the same, when and as collected, to the contractor who deposited the stock or bonds. The said clause may further provide that if the deposit be in the form of coupon bonds, the coupons as they respectively become due shall be delivered to the contractor. The said clause may further provide that the contractor shall not be entitled to interest or coupons or income on any of the deposited stock or bonds, the proceeds of which shall be used or applied by the municipality, pursuant to the terms of the contract.

Added by L. 1916, Ch. 176, in effect April 10, 1916.

See also State Finance Laws, § 43a.

§ 87. Support and maintenance of charitable and other institutions.

Boards of estimate and apportionment, common councils, boards of aldermen, boards of supervisors, town boards, boards of trustees of villages and all other boards or officers of counties, cities, towns and villages, authorized to appropriate and to raise money by taxation and to make payments therefrom, are hereby authorized, in their discretion, to appropriate and to raise money by taxation and to make payments from said moneys, and from any moneys received from any other source and properly applicable thereto, to charitable, eleemosynary, correctional and reformatory institutions wholly or partly under private control, for the care, support and maintenance of their inmates, of the moneys which are or may be appropriated therefor; such payments to be made only for such inmates as are received and retained therein pursuant to rules established by the state board of charities; except that boards of trustees of villages and town boards of towns in which there is no hospital located, and which are situated upon and adjoin the boundary line of a neighboring state, are hereby authorized, in their discretion, to appropriate and to raise money by taxation and to make payments from said moneys, and from any moneys received from any other source and properly applicable thereto, to hospitals in such adjoining state for the purpose of maintaining a bed or beds in such hospital for the benefit of and to be used exclusively by the inhabitants of such village or town. Boards of trustees of villages and town boards of towns situate upon the boundary line of a neighboring state, which have appropriated and raised money by taxation for the purpose of maintaining a bed or beds in a hospital in such adjoining state and have not paid the same, are hereby authorized to use said money for the purpose for which it was appropriated and raised. Payments to such hospital in an adjoining state shall be made only for such inmates as are received and retained therein pursuant to rules established by the state board of charities.

§ 88. Separate specifications for certain contract work.

Every officer, board, department, commission or commissions, charged with the duty of preparing specifications or awarding or entering into contracts

for the erection, construction or alteration of buildings in any county or city, or the borough of any city, when the entire cost of such work shall exceed one thousand dollars, must have prepared separate specifications for each of the following branches of work to be performed.

1. Plumbing and gas fitting.
2. Steam heating, hot water and ventilating apparatus.

Such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by any county, city or borough, or a department, board, commission, or commissioner or officer thereof, for the erection, construction or alteration of buildings or any part thereof, shall award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations. Nothing in this section shall be construed to prevent the authorities in charge of any county or municipal building from performing any such branches of work by or through their regular employees, or in the case of public institutions, by the inmates thereof.

Added by L. 1912, Ch. 514, in effect Sept. 1, 1912.

§ 89. Payment of debts of illegal corporations.

Whenever an attempt has been or is hereafter made to create a municipal corporation, either by special act of the legislature or by proceedings taken under the general laws of the state, and such corporation has chosen officers and has exercised the powers, duties and authority vested in it by the law under which it purports to have been created, and such corporation has become indebted to any person, association or corporation in the aggregate amount of five hundred dollars or more, and such corporation shall have been held or declared to be no corporation by a court of record of competent jurisdiction of this state, either because the special act creating it is declared to be unconstitutional, or otherwise, then such corporation shall be deemed a de facto corporation for the purpose of winding up its affairs and paying its indebtedness; and its officers shall be deemed de facto officers and shall have all the powers and authority and shall perform all the functions and duties vested in or required of them under the law pursuant to which such corporation was attempted to be created, so far as may be necessary to liquidate the affairs of such corporation and to pay its money obligations, including all the power and authority to assess, levy and collect taxes upon the taxable persons and property within the corporate limits of such illegal corporation, to such an amount as shall be sufficient to pay obligations of such corporation and the expense incident thereto.

2. Such de facto officers shall keep an accurate record of all their proceedings hereunder, including the amount of money raised by taxation and the purpose for which it was raised and the amount of money paid out, to whom and for what purpose. They shall audit all bills before payment and shall take receipts for all moneys paid out.

3. When all the indebtedness of such illegal corporation has been paid and its obligations discharged, such de facto officers shall make a full, complete and accurate report, under oath, to the county judge of the county in which such illegal corporation is located or to a justice of the supreme court of all their proceedings hereunder and on the order of such judge or justice

approving and confirming such report, such de facto officers shall be discharged and their functions and duties shall cease. Such report and order shall be filed in the office of the county clerk of the county in which such illegal corporation was located.

Added by L. 1915, Ch. 272, in effect April 13, 1915.

§ 90. Workmen's compensation insurance on public works.

Each contract to which a municipality, or any public department or official thereof, is a party and which is of such a character that the employees engaged thereon are required to be insured by the provisions of chapter forty-one of the laws of nineteen hundred and fourteen, known as the workmen's compensation law, and acts amendatory thereto, shall contain a stipulation that the same shall be void and of no effect unless the person or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of said contract, such employees, in compliance with the provisions of said law.

Added by L. 1916, Ch. 478, in effect May 9, 1916.

See also Workmen's Compensation Law, § 51.

ARTICLE 6.

Public Health and Safety.

- Section 120.** Contracts for purification of water and sewerage.
- 120a. Contracts for sewerage disposal.
 - 120b. Supervision of sewerage system.
 - 120c. Obligations and privileges relating to sewerage contracts.
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 - 129. General powers and duties of superintendent.
 - 130. Admission and maintenance of patients.
 - 131. Training school for nurses.
 - 132. Room for detention and examination of persons who are suspected of being insane.
 - 133. Visitation and inspection.
 - 134. Existing town, city or village public general hospitals.
 - 135. Application of preceding sections.
 - 135a. Workshops in connection with tuberculosis hospitals.

§ 120. Contracts for purification of water and sewerage.

The local authorities of the several cities, towns and villages of the state having charge of the supply of water and the care of sewerage in their respective localities, are hereby authorized, on behalf of their cities, towns and villages, respectively, to enter into contracts with the owners of any process or apparatus for the purification of water and sewerage whether pro-

tected by patents or not, and either contract for the use of apparatus and process for a term of years or for the purchase of the same, as to them shall seem advisable. It shall be lawful for any two or more of such municipalities in this state, excepting only cities of the first and second class, without regard to the form of their incorporation, including towns or sewer districts of towns, to jointly construct, provide, maintain and operate a comprehensive system of sewerage including trunk lines and laterals, or a system of conveying or conducting sewerage from said municipalities from a point or points to be agreed upon to a common destination or disposal plant or plants, and to construct, maintain and operate within or without the said municipalities or any of them one or more outlet or trunk sewers, plants, works or stations for the treatment, disposal, or rendering of sewerage, or any such municipality or any such municipalities may jointly or severally contract for the construction for it or them of any such system, extension or part thereof, including any such sewers, plants, works or stations, and agree to pay annually, semi-annually or quarterly for the use or possession thereof, by way of permanent rental reserved therefor; or such lawful authorities of the respective municipalities may jointly or severally contract with any person, persons or corporation or with other municipalities or sewage districts for the removal of sewage within the boundaries of such local government, upon such reasonable terms as they may agree upon. And to that end the governing bodies or boards of any two or more municipalities, including sewer districts of a town, authorized by law to have charge of sewer systems established or to be established in said municipalities, or sewer districts of a town, respectively, may unite and jointly cause to be made at their joint expense (each district bearing a part of the expense in proportion to the assessed valuation of real estate in such district, or on such other basis or division as may be jointly agreed upon) by competent engineers, mechanics and others, surveys, maps, plans, reports and estimates of proposed works and improvements relating to such contemplated public improvement or works authorized by this act, which such municipalities may desire to jointly provide, maintain, operate or lease under the authority conferred by this act, and for such purpose they may determine upon the final route and plan for the building or construction of such sewerage system and for the making of such surveys, maps, plans, reports and estimates as provided in this section. It shall be lawful for the officers and agents of such municipalities to enter at all times upon any lands or waters for the purpose of exploring, surveying, and laying out the route of such sewerage system.

Amended by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120a. Contracts for sewerage disposal.

The respective municipalities and districts may contract with each other, or they may jointly or severally contract with a third person, corporation or municipality, either for the construction, operation, maintenance or leasing of a complete comprehensive system for the removal and disposal of sewerage, or of a trunk line system with or without lateral connections, with or without the sewerage disposal plant or of a sewerage disposal plant; each of the boards or commissioners, however, binding only the municipalities or districts which they respectively represent. Such municipalities jointly acting through such board or commissioners, if they deem it expedient so to do, may contract with

any other municipality or municipalities through or over whose territory such trunk sewer or sewers are intended to pass, for the construction of said outlet, trunk sewer or sewers and appurtenances located within the territory of such other municipality, in such manner as may be agreed upon between such other municipality, and the municipality theretofore jointly contracting as herein authorized, or such jointly contracting municipalities may contract in writing with any other municipality or municipalities for the privilege of connecting its or their sewers and drains with such outlet or trunk sewer or sewers so to be jointly constructed by the municipalities originally contracting for the public improvements or works hereby authorized, and it shall be lawful for such other municipality or municipalities to enter into a contract for such purpose, upon such terms and for such consideration and length of time as may be mutually agreed upon between all the contracting municipalities.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120b. Supervision of sewage system.

If the public works herein provided be constructed and operated by the municipalities acting jointly, the local authorities of the contracting municipalities or districts having charge of sewage shall jointly supervise the construction and operation of such sewage system, or they may jointly engage or employ a competent sanitary engineer for such purpose. They shall jointly elect or appoint all necessary employees at the disposal plant and for the care of the trunk line sewer, and severally appoint such employees as they may be authorized so to do by the respective governing bodies to work on the system within the bounds of such municipality.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120c. Obligations and privileges relating to sewerage contracts.

No contract for the construction, use or possession of any such sewer system extension or part thereof, including any such sewers, plants, works or stations, authorized by section one hundred and twenty, or for the removal of sewage, or agreement to pay any annual, semi-annual or quarterly sum by way of permanent rental reserved therefor, shall be deemed to create an indebtedness of such city, town or village under any act limiting the amount of such indebtedness, unless and to the extent that such municipality or municipalities shall covenant to pay for such system, extension or part thereof, including any such sewers, works, plants or stations under any right reserved in such contract or otherwise. Such system, extension or part thereof shall, when accepted under such contract, and such works, plants or stations, may if so provided therein, pass into the use, possession, management and control of such municipality or municipalities, and it or they shall, by proper provision in the said contract, subject such contract to its or their right at any time to terminate all its or their liability under the same for such rental by paying for such system, extension or part thereof a price named therein or to be determined in accordance with the provisions thereof, and it or they may by proper provision in such contract, covenant to terminate its or their liability in such manner at a time or within a period named therein, but the sum or rental to be paid for such use and possession or the price which must be paid for such

system, extension or part thereof in order to terminate the liability of such municipality or municipalitites under such contract, shall not be fixed by said contract beyond a period of thirty years, after which and at any time thereafter, if such municipality or municipalities shall not have terminated its or their liability under said contract, the sum or rental to be paid for the continued use and possession of such system, extension or part thereof or the price at which the same must be paid for in order to terminate such liability, which sum or rental and which price shall be based on the value of such system, extension or part thereof at any such time, shall be fixed by agreement, or in the absence of agreement by application to a competent court and under its order, but each such agreement or order shall be limited to a period not exceeding ten years. And such local authorities may also at any time contract for the maintenance and operation of any such system, extension or part thereof, including any such works, plants or stations or of any sewerage or sewage disposal system or part thereof owned or used by any such municipality or municipalities.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-d. Officers of meeting.

In order to facilitate business procedure, the local authorities of the several municipalities or districts meeting jointly for the purposes herein provided shall, at a meeting at which all the municipalities and districts intending to act jointly are represented, choose from among their number a chairman, who shall act as such until his successor is chosen in a similar manner. Such meeting, when organized, shall elect a secretary who may or many not be a member of one of the local boards meeting jointly.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-e. By whom proposed district represented.

Until a sewer district of a town is organized as provided by the town law, the supervisor, or a member of the town board appointed by the supervisor, of the town in which the proposed sewer district is located, may act for and on behalf of the people of the territory proposed to be embraced in a sewer district, when requested so to do by a petition in writing signed by not less than five per centum of the voters of such proposed district, at such joint meeting of municipalities and districts; provided, however, that neither the town nor any property within the town, except such property as may be within such proposed district, shall be chargeable with any debt or expenses created by such municipalities or districts acting jointly.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-f. Contract; how executed.

No municipality or district acting jointly as herein provided shall be bound by any contract or agreement unless such contract or agreement be signed and executed by a majority of the local authorities of such municipality having care of sewerage in such municipality or district.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-g. Apportionment of cost.

Before any such contract for construction mentioned in section one hundred and twenty-c shall become effective, such local authorities shall determine the

part or proportion of the annual cost thereof, if any, which is to be assessed upon the property benefited thereby, and the method of such assessment, and shall provide that any part thereof not actually paid out of such assessment shall be paid out of the general funds to be raised by a tax in such city, town, village or sewer district. In the case of a town, the petition for the creation of such sewer district, or supplemental petition, shall request the construction of such sewer system, extension or part thereof, as herein provided, and such petition shall comply in form, substance and in the manner of execution, so far as applicable thereto, to the requirements of section two hundred and thirty of the town law, except that it may state that the annual sum or rental to be paid for the use of said plant or for the removal of sewage as herein provided shall be fixed and assessed in the first instance for the full period named in such contract, not exceeding thirty years, and that any part thereof not actually paid out of such assessment may be reassessed upon the property in such district. Before acting on any such petition, the town board shall give the notice provided in section two hundred and thirty-a of the town law, and the assessment shall be made in form and substance so far as applicable thereto as provided in section two hundred and thirty-seven of said law.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-h. Further provisions as to apportionment of cost.

Each of the contracting municipalities or districts shall pay its just and proportionate share for the public improvement authorized by this act and the general laws, including its just and proportionate share of the cost for the removal of sewage and of maintenance and carrying charges of the system. The manner of arriving at the share each local government shall bear and the method of payment thereof as hereinafter provided shall be determined by its local board or commissioners having charge of sewage, before such contract for construction or for sewerage removal becomes effective, as hereinafter provided.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-i. Bond issues and assessments.

The indebtedness created for such public works may be paid by each contracting municipality, including a sewer district of a town, wholly by a bond issue; or partly by a bond issue, and partly by assessment on the property deemed specially benefited by such improvement and partly by money raised by general taxation; or partly by a bond issue and partly by assessment on the property deemed specially benefited by such improvement. In the case of a sewer district of a town the petition for the creation thereof or a supplemental petition may state the means of payment as above provided and the assessment therein shall be made in form and substance so far as applicable as provided in section two hundred and thirty-seven of said law, except that such sewer commissioner shall assess a part of the district's proportionate share of the total cost of such system on the lands within such district, or extension of an existing district in proportion, as nearly as may be, to the benefit which each lot or parcel will derive therefrom. Such sewer commissioners shall determine the amount to be raised by general taxation for such expense and the amount to be raised by bond, if any.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-j. Notes in anticipation of assessments.

For the purpose of defraying the costs and expenses of such public improvement as is authorized hereby in respect of which an assessment for benefits may be made on lands and real estate situated in any such contracting municipality, the governing body or board having charge of the finances of any such contracting municipality may, if necessary, borrow money and secure the payment of the same by the notes or other temporary obligations of such municipality; these notes and obligations may be renewed from time to time until such improvement or works be completed or the assessment for benefits confirmed; when so confirmed the said governing body or board of such municipality shall provide the cost and expenses of such improvements in the manner herein or in general laws provided.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-k. Payments; how made.

It shall be lawful for the governing body or board having control of the finances of such contracting municipality, in lieu of issuing the bonds of such municipality, to pay its proportion of the costs and expenses of any improvements jointly contracted for and made under this act, with money to be raised by taxation, after the making of the public improvements herein authorized have been determined upon and a joint contract made and entered into pursuant to the provisions of this act, or by paying the whole or part of such indebtedness out of all moneys belonging to such contracting municipality not otherwise appropriated or required.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-l. Letting of contracts.

Whenever any work to be performed or materials to be furnished in or about any improvement to be made by two or more municipalities under the provisions of this act shall involve an expenditure of any sum of money exceeding five hundred dollars, the municipal bodies or boards of the contracting municipalities, by their official action taken in joint meeting as herein provided, shall designate a time when they will meet at their usual place of meeting to receive proposals, in writing, for doing the work or furnishing the materials, and such joint meeting shall order the chairman and secretary thereof to give notice, by advertisement inserted in one or more newspapers published or circulating in the municipalities jointly contracting, at least two weeks before the time of such meeting, of the work to be done or materials to be furnished, of which at the time of such order they shall cause to be filed in the office of such joint meeting particular specifications; all proposals received shall be publicly opened by such chairman in the presence and during a session of such joint meeting, and of all others who choose to attend the said meeting; not more than one proposal shall be received from any one person, directly or indirectly, for the same contract work or materials; and the said joint meeting may reject any and all of said proposals and direct its chairman and secretary to advertise for new proposals and accept such as shall in the opinion of a majority of the municipalities represented in said joint meeting be deemed most advantageous for the said municipalities, subject, however, to the reservations herein provided; the board may require a bond or deposit

from the person submitting a proposal, the liability of such bond to accrue, or such deposit to be forfeited to the municipality, or municipalities, in case such person shall refuse to enter into a contract in accordance to his proposal. The proposal so accepted shall be reduced to a contract in writing, and a satisfactory bond to be approved by such joint meeting shall be required and given for its faithful performance, but all contracts when awarded shall be awarded to the lowest responsible bidder offering satisfactory security; this section shall not apply to any engineer or agent of the joint contracting municipalities engaged in supervising or directing the work of such improvements.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-m. Application of other laws to procedure.

Except where inconsistent with this act, or otherwise permitted hereunder the apportionment of local assessments and the manner of payment of the expense of construction of such public works shall be as provided in the town law, the village law, the general cities law, or in the manner provided in any special city and of any contracting city.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-n. Maps and plans.

Before taking any proceedings for the construction of any sewer or of any system of sewers or of any addition thereto or alteration thereof, such municipality or municipalities acting severally or jointly shall cause to be made a map and plan therefor, or an amendment of any map and plan previously approved, as the case may be, and shall submit the same to the state commissioner of health for his approval, and upon his approval the same shall be filed in his office. A copy of such map and plan or of any such amendment thereof shall also be filed in the office of the clerk of each such municipality. Any such map and plan shall include specifications of dimensions, connections and outlets or sewage disposal works and may also include any existing sewer which it shall be found feasible and proper to incorporate or include in the proposed system. No work of any kind shall be done on or for the construction, extension, reconstruction, removal or modification of any system of sewers or of any sewer thereof until a map and plan covering the entire system shall first have been duly approved and filed as above provided, and in the execution of the construction, extension, reconstruction, removal or modification of any system of sewers or of any sewer thereof no deviations from the plans as finally approved and filed shall be made until plans or descriptions adequately showing such deviations are first approved and filed as above provided. The state commissioner of health, in approving said map and plan or by a certificate supplementing any such approval, may authorize such municipality or municipalities to temporarily omit or defer the con-

struction of any portion of any such sewer or system of sewers. A copy or copies of his approval or of any such supplemental certificate shall be certified to each such municipality and filed in the office of the clerk thereof.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-o. Definitions.

The words "joint meeting" as used in this act shall be construed to mean the meeting or assembly of the members of the governing bodies or boards of the several municipalities having authority to make and enter into a contract for the construction jointly of public improvements, pursuant to and by virtue of the provisions of this act.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-p. Referendum in cities and villages.

In any such city or village, whether acting severally or jointly, a copy of such contract, for construction mentioned in section one hundred and twenty-c, with a copy of the determination required in section one hundred and twenty-g, shall be published at least twice in one or more newspapers published therein, including the official newspaper or newspapers, if any, of such city or village, or posted in not less than five public places, and published at least twice in a newspaper circulating in such municipality if no newspaper is published therein. If, within fifteen days after the publication or posting of such contract and determination, a protest or protests against such contract shall be filed in the office of the clerk of such city or village signed either by not less than one-third of the governing body adopting such resolution or by a three per centum in number of the taxpayers thereof whose names appear on the last preceding assessment roll of real property, excluding special franchises, then such contract shall not become effective unless the governing body shall by a further resolution provide for the submission to the taxpaying voters of a proposition to ratify such contract, nor unless, within sixty days after such publication or posting such proposition shall be adopted at a general election or at a special election to be called and held for that purpose, by a majority of the voters voting on such proposition. At any such election only voters entitled to vote for an officer and women qualified to vote for an officer except as to sex, owning real property other than special franchises assessed in their names upon the last preceding assessment roll of such city or village, shall be entitled to vote upon such proposition. At least ten days' notice of any election under this section shall be given by the clerk of the city or village by publication at least twice in one or more newspapers, including the official newspaper or newspapers, if any, of such city or village, or by posting in at least five public places, if no newspaper is published therein. Such election may be held and the result canvassed and certified as may be required

by any general or special law applicable to an election upon a proposition in any such city or village, or in the absence of any such law as may be prescribed by any general ordinance. The voting shall be by ballot, prepared in the form prescribed by the election law. The facts as to the filing and sufficiency of any protests under this section, and as to the calling, holding or result of any election which may be required or held under this section or under any other statute with respect to the authorization of any such improvement or the ratification of any ordinance authorizing the same, and all facts affecting the validity of any contract mentioned in section one hundred and twenty-c, including the organizations or acts of any town or sewer district shall, for the purpose of this section, be conclusively determined by a resolution of the governing body of any such city, town or village. A copy of such resolution shall be published twice in one or more newspapers, including the official newspaper or newspapers, if any, of such city, town or village, or posted in not less than five public places if no newspaper is published therein, and the facts therein stated shall not be disputed in any action commenced after the expiration of ten days after such publication or posting involving the validity of such contract, or of any tax, assessment or other charge to meet any payment thereunder, and such contract shall be conclusively deemed to be valid unless entered into in violation of this section, section one hundred and twenty, or section one hundred and twenty-c of this chapter.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-q. Rules and regulations.

Such person, persons or corporation operating and maintaining such system or contracting for the removal of sewage as herein provided shall be subject to such rules, ordinances and regulations as said municipalities may establish, not inconsistent with any contract made therefor.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-r. Maintenance of sewage system.

In the event of such person, persons or corporation failing and neglecting to keep said system of sewage in a good healthy and effective condition after due notice in writing of not less than sixty days, from any municipality using the same, their rights, of such person, persons or corporation, guaranteed under such contract may be canceled by such municipality, except that such municipality or municipalities shall pay the fair and reasonable value of such sewerage system as provided in such lease or contract. This section shall not apply if such system is under the management and control of one or more of such contracting municipalities.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 120-a. Acquisition of property.

The joint meeting representing any two or more of such municipalities, as aforesaid, shall have power with their consent and on their behalf and by its own proper officers to enter into any contract and to acquire, by purchase or condemnation, and to hold, maintain and operate any property, necessary or desirable for any of the purposes authorized as aforesaid, as fully and to the same extent as any municipality acting severally.

Added by L. 1917, Ch. 709, in effect June 1, 1917.

§ 121. Establishment and maintenance of free public baths.

All cities of the first and second class shall establish and maintain such number of free public baths as the local board of health may determine to be necessary; each bath shall be kept open not less than fourteen hours for each day and both hot and cold water shall be provided. The erection and maintenance of river or ocean baths shall not be deemed a compliance with the requirements of this section. Any city, village or town having less than fifty thousand inhabitants may establish and maintain free public baths, and any city, village or town may loan its credit or may appropriate of its funds for the purpose of establishing such free public baths.

§ 122. Refusal to take persons to hospital prohibited.

In any city, county, town or village of this state wherein exists, or is hereafter created, an ambulance system, supported wholly or partly at public expense, or which is wholly or partly under the care, management or control of the public authorities, no person in charge of an ambulance, hospital, or house or place of reception for the sick or injured, shall refuse, in answer to a call or demand for an ambulance, if such call has been answered by the attendance of an ambulance, to take such person for whom a call may be made to the hospital or place of reception for the sick or injured from which the ambulance came, for examination and treatment by the house authorities of the said hospital or place of reception for the sick or injured.

Any person neglecting or refusing to comply with the provisions of this section shall be guilty of a misdemeanor.

This section shall apply to the drivers of and to the physician in charge of an ambulance.

§ 123. Erection and operation of life-saving apparatus.

The common council of any city, the board of trustees of any incorporated village and the town board of any town in this state, may upon the application of ten or more taxpayers furnish, erect and locate such life-saving

See Bender's Health Officers' Manual, also Parker and Worthington's Law of Public Health and Safety.

apparatus, appliances and paraphernalia, and do all things necessary for the practical operating of the same as they may deem advisable, along the shores or banks of any streams, rivers or waters within their respective boundaries.

§ 124. Supervision and charge of apparatus.

All life-saving apparatus, appliances and paraphernalia furnished and erected as provided by section one hundred and twenty-three shall be under the supervision and charge of the respective common council, board of trustees and town board so directing the furnishing and erecting of the same, and they shall be invested with the power to make such rules and regulations as they may deem proper for the proper maintenance, care and operating of the same, and for the improving, altering or changing of the same at any time when in their judgment they deem it in the interest of their respective localities so to do.

§ 125. Cost and expense of operation.

The cost and expense of the furnishing, erecting, care and operating of the apparatus, appliances and paraphernalia as provided by section one hundred and twenty-three, shall be paid in like manner as other debts and obligations of the city, village and town furnishing, erecting, maintaining and operating the same.

§ 126. Establishment of public general hospitals.

The governing board of any town, city or village may by resolution determine that there shall be in said town, city or village a public general hospital for the care and treatment of the sick. In any city in which a board of estimate and apportionment or other board is required to approve appropriations for public purposes, the resolution of the governing board to establish a public general hospital shall be effective only after the necessary appropriation for lands and buildings for such public general hospital shall have been approved by said board of estimate and apportionment or other board, in the same manner and by the same vote by which it is required by law to approve other appropriations for public purposes. In any town, or in any city of the third class, or in any village, the resolution of the governing board to establish a public general hospital shall be effective only after the necessary appropriation for lands and buildings for such public general hospital shall have been approved at a town, city or village election by a majority of the voters qualified to vote upon a proposition to raise town, city or village funds. When the governing board of any town, city or village shall have voted to establish a public general hospital and the estimated expenditure for lands and buildings shall have been approved as hereinabove provided, such governing board shall have the following powers:

1. To purchase and lease real property therefor, or acquire such real property and easements therein by condemnation proceedings in the manner prescribed in the condemnation law, in any locality within the jurisdiction of such governing board.

2. To cause to be assessed, levied and collected such sums of money as shall have been approved as hereinbefore provided for suitable lands and buildings, and as it shall deem necessary for equipment and improvements for said hospital, and for the maintenance thereof, and for all other necessary expenditures therefor; and to borrow money for the purchase of a site and for the erection and equipment of such hospital on the credit of the town, city or village of which it is the governing board, and issue obligations therefor, in such manner as it may do for other town, city or village purposes, respectively.

3. To accept and hold in trust for the town, city or village of which it is the governing board, any grant or devise of land, or any gift or bequest of money or other personal property, or any donation to be applied, principal or income, or both, for the benefit of said hospital, and apply the same in accordance with the terms of the gift.

Added by L. 1910, ch. 558, in effect June 21, 1910.

§ 127. Appointment and terms of office of managers.

When a governing board of a town, city or village shall have determined to establish a public general hospital for the care and treatment of the sick, the supervisor of the town, the mayor of the city or the president of the

board of trustees of the village shall appoint five citizens of the town, city or village, respectively, who shall constitute a board of managers of the said hospital. The term of office of each member of said board shall be five years, and the term of one of such managers shall expire annually; the first appointments, however, being made for the respective terms of five, four, three, two and one years. Appointments of successors shall be for the full term of five years, except that the appointment of a person to fill a vacancy occurring by death, resignation or cause other than the expiration of a term shall be made for the unexpired term. Failure of any manager to attend three consecutive meetings of the board shall cause a vacancy in his office, unless said absence is excused by formal action of the board of managers. The managers shall receive no compensation for their services, but shall be allowed their actual and necessary traveling and other expenses, to be audited by the governing board, and paid in the same manner as the other expenses of the hospital. Any manager may be removed from office at any time by the appointing authority after having received notice in writing of the cause of the proposed removal and after an opportunity to be heard thereon. The treasurer of the town, city or village by which the hospital is maintained shall be treasurer of the hospital.

Added by L. 1910, ch. 558. In effect June 21, 1910.

§ 128. General powers and duties of managers.

The board of managers shall:

1. Elect from among its members annually a president, a vice-president, and a secretary. It shall appoint a superintendent of the hospital, who shall not be a member of the board of managers, and who shall hold office at the pleasure of said board.

2. Erect all necessary buildings; make all necessary improvements and repairs and alter any existing buildings, for the use of said hospital, provided that all expenditures for new buildings or alterations, other than ordinary repairs, shall first be authorized by the governing board of the town, city or village and the plans thereof approved by the state board of charities.

3. Fix the salary of the superintendent and the number and salaries of all other employees, within the limits of the appropriation made therefor by the governing board, and such salaries shall be compensation in full for all services rendered. The board of managers may determine the amount of time required to be spent at the hospital by said superintendent in the discharge of his duties.

4. Provide for the medical care and treatment of all persons admitted to the hospital; and shall appoint and may at pleasure remove resident, visiting and consulting physicians and surgeons; and shall establish rules and regulations governing the service thereof.

5. Having the general superintendence, management and control of the said hospital and of the grounds, buildings, officers, employees and inmates thereof; and of all matters relating to the government, discipline, contracts and fiscal concerns thereof; and make such rules and regulations as may seem to them necessary for carrying into effect the purposes of such hospital.

6. Maintain an effective inspection of said hospital, and keep itself informed of the affairs and management thereof; shall meet at the hospital at least once in every month, and at such other times as may be prescribed in the by-laws; and shall hold its annual meeting at least three weeks prior to the meeting of the governing board at which appropriations for the ensuing year are to be considered.

7. Keep in a book provided for that purpose a proper record of its proceedings, which shall be open at all times to the inspection of its members, of the members of the governing board and of duly authorized representatives of the state board of charities.

8. Certify all bills and accounts, including salaries and wages, and transmit them to the governing board, who shall provide for their payment in the same manner as other charges against the town, city or village.

9. Make to the governing board of the town, city or village by which the hospital is maintained, at such times as said board shall direct, a detailed

annual report of the operations of the hospital, the number of patients received, the methods and results of their treatment, and such other matters as may be required of them. Such reports shall include full and detailed estimates of the appropriations required during the ensuing year for all purposes, including maintenance, erection of buildings, repairs, improvements and other necessary purposes.

Added by L. 1910, ch. 558, in effect June 21, 1910.

§ 129. General powers and duties of superintendent.

The superintendent shall be the chief executive officer of the hospital and, subject to the by-laws, rules and regulations thereof, and to the general control of the board of managers, shall:

1. Equip the hospital with all necessary furniture, appliances, fixtures and other needed facilities for the care and treatment of patients and for the use of officers and employees thereof, and purchase all necessary supplies.

2. Have general supervision and control of the records, accounts, and buildings of the hospital and all internal affairs, and maintain discipline therein, and enforce compliance with, and obedience to, all rules, by-laws and regulations adopted by the board of managers for the government, discipline and management of said hospital, and the employees and inmates thereof. He shall make and enforce such further rules, regulations and orders as he may deem necessary, not inconsistent with law, or with the rules, regulations and directions of the board of managers.

3. Appoint such employees as he may think proper and necessary for the efficient performance of the business of the hospital, and prescribe their duties; and for cause stated in writing, after an opportunity to be heard, discharge any such employee at his discretion.

4. Cause proper accounts and records of the business operations of the hospital to be kept regularly from day to day, in books and on forms provided for that purpose; and see that such accounts and records are correctly made up for the annual report of the governing board, as required by subdivision seven of section one hundred and twenty-eight of this chapter, and present the same to the board of managers, who shall incorporate them in their annual report to the said governing board.

5. Receive into the hospital, under rules established by the board of managers, any person in the town, city or village who is sick or maimed or injured and who is in need of hospital care, irrespective of whether such person is able to pay for his care or not; and may also receive persons from without the town, city or village, provided there is a vacancy in the hospital, and provided the reception of such persons does not interfere with the proper care and treatment of persons received from the town, city or village.

6. Cause to be kept proper records of the admission of all patients, their name, age, sex, color, marital condition, residence, occupation, place of last employment and the names and addresses of their nearest relatives or friends. He shall also cause a careful examination to be made of the physical condition of all persons admitted to the hospital; and shall cause a record to be kept of the condition of each patient when admitted, and from time to time thereafter.

7. Discharge from said hospital any patient who is found to have recovered from his illness sufficiently to be no longer in need of hospital care, or who

shall wilfully or habitually violate the rules thereof, or who for any other reason is no longer a suitable patient for treatment therein; and shall make a full report thereof at the next meeting of the board of managers.

8. Collect and receive all money due the hospital, keep an accurate account of the same, report the same at the ensuing monthly meeting of the board of managers, and transmit the same within ten days after such meeting to the treasurer of the town, city or village by which the hospital is maintained.

9. Give a bond before entering upon the discharge of his duties, in such sum as the board of managers may determine, to secure the faithful performance of such duties.

Added by L. 1910, ch. 558, in effect June 21, 1910.

§ 130. Admission and maintenance of patients.

Whenever a patient shall have been admitted to such hospital, the superintendent shall cause to be made such inquiry as he may deem necessary, relative to the ability of such patient, or of the relatives of such patient legally liable for his support, to pay for his care and treatment. If he find that such patient, or said relatives, are able to pay for his care and treatment in whole or in part, an order shall be made by the superintendent directing such patient, or said relatives, to pay to the treasurer of such hospital for the support of such patient a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual cost of maintenance. The superintendent shall have the same power and authority to collect such sums from the patient, or his relatives legally liable for his support, as is possessed by an overseer of the poor in like circumstances. If the superintendent find that such patient, or said relatives, are not able to pay, either in whole or in part, for his care and treatment in such hospital, the unpaid cost of his maintenance shall become a charge upon the town, city or village by which the hospital is maintained; provided, however, that in case such patient is not a resident of said town, city or village, the cost of his maintenance shall be a charge upon the civil division of the state upon which he would be a charge as a poor person. No employee of such hospital shall accept from any patient thereof any fee, payment or gratuity whatsoever for his service.

Added by L. 1910, ch. 558, in effect June 21, 1910.

§ 131. Training school for nurses.

The board of managers of any hospital under this act may establish and maintain in connection therewith and as a part of the public hospital a training school for nurses. The board may, in its discretion, appoint an advisory board for such training school and define the functions of such advisory board.

Added by L. 1910, ch. 558, in effect June 21, 1910.

§ 132. Room for detention and examination of persons who are suspected of being insane.

The board of managers may provide a suitable room for the temporary detention, observation and care of persons who are suspected of being insane and shall do so upon the direction of the governing board or of the state commission in lunacy; provided, however, that the state commission

in lunacy before making such direction shall give to both the board of managers and the governing board due notice and opportunity to be heard thereon.

Added by L. 1910, Ch. 558, in effect June 21, 1910.

§ 133. Visitation and inspection.

Members of the board of managers shall be admitted to every part of the hospital and premises, and shall have access to all books, papers, accounts and records pertaining to the hospital and shall be furnished with copies, abstracts and reports whenever required by them. All hospitals established or maintained under the provisions of sections one hundred and twenty-six, one hundred and twenty-seven, one hundred and twenty-eight, one hundred and twenty-nine, one hundred and thirty, one hundred and thirty-one, one hundred and thirty-two, one hundred and thirty-three and one hundred and thirty-four of this act shall be subject to inspection by any duly authorized representative of the state board of charities, of the state charities aid association, and of the governing board of the town, city or village by which the hospital is maintained; and the resident officer in charge shall admit such representatives into every part of the hospital and premises, and give them access on demand of all records, reports, books, papers and accounts pertaining to the hospital.

Added by L. 1910, ch. 558, in effect June 21, 1910.

§ 134. Existing town, city or village public general hospitals.

Wherever a town, city or village has, previous to the passage of this act, established a public general hospital, the governing board of said town, city or village may by resolution provide that thereafter such hospital shall be controlled and maintained in accordance with the provisions of this act. Any public general hospital which may thereafter be established by any governing board of any town, city or village shall be subject to all the provisions of sections one hundred and twenty-six to one hundred and thirty-four, inclusive, of this chapter.

Added by L. 1910, ch. 558, in effect June 21, 1910.

§ 135. Application of preceding sections.

Sections one hundred and twenty-six to one hundred and thirty-four, both inclusive, shall not apply to the city of New York.

Added by L. 1910, ch. 558, in effect June 21, 1910.

§ 135-a. Workshops in connection with tuberculosis hospitals.

Any municipal corporation maintaining a hospital or a sanatorium for the treatment of tuberculosis may establish and maintain workshops in connection therewith for the production of articles or supplies required by such hospital or sanatorium, or by any other institution or department of such municipality. Except in a supervisory capacity no person shall be employed in such workshop or workshops unless he is or shall have been a patient suffering from tuberculosis in such hospital or sanatorium. The appropriate municipal authorities may appropriate or provide funds for the establishment and maintenance of the said workshops in the same manner as for the establishment and maintenance of such hospital or sanatoria. Notwithstanding the provisions of the prison law in relation to the sale of articles manufactured in the state prisons, the products of such workshop may be used in such hospital or sanatorium or by any other institution or department of such municipality. Such workshops shall be under the direction and control of the municipal authority having direction and control of the hospital or sanatorium to which they may be attached.

Added by L. 1913, ch. 341, in effect Apr. 19, 1913.

§§ 186-189b.

(These new sections were added in 1911 by ch. 700. They relate only to treatment of public intoxication in cities and not in villages.)

ARTICLE 7.

Trusts for Parks and Libraries in Villages and Towns.

Section 140. Trusts for public parks and libraries.

141. Trustees a corporation.

142. Eligibility of trustees.

143. Management and appropriation of property.

144. Parks and libraries to be free.

145. Subject to visitation of supreme court.

146. Devises and bequests restricted.

§ 140. Trusts for public parks and libraries.

It shall be lawful to grant and devise real estate, and to give and bequeath personal property to trustees and their successors in trust, for the purpose of creating, continuing and maintaining, according to the terms, conditions and provisions of such grant, gift, devise or bequest, one or more public parks, or a public library, or for the purpose of aiding and instructing children, or for any one or more of such purposes, in any city, village or town of this state. The number of such trustees shall not be less than three nor more than nine.

Amended by L. 1910, ch. 163, in effect April 25, 1910.

§ 141. Trustees a corporation.

Whenever any grant, gift, devise or bequest shall have been made, under the provisions of this article, such trustees shall thereupon become and be a body politic and corporate with the name which shall have been specified by the donor in making the donation, and with a number of trustees, within the foregoing limits, named by the donor; and such corporation shall have full power to take and hold all property which shall have been and also which shall thereafter be granted, given, devised or bequeathed to it as aforesaid for said uses and purposes, and shall possess the powers and be subject to the provisions and restrictions contained in general corporation law. If no name shall have been specified by the donor as aforesaid, the name of the corporation shall be such as the said trustees shall adopt, certify and file in the county clerk's office of the county in which the interested city, village or town is located.

Amended by L. 1910, ch. 163, in effect April 25, 1910.

§ 142. Eligibility of trustees.

In case of the death of a trustee or of his resignation, removal from office, or inability to discharge the duties of his office, his place shall be deemed to be vacant, and may be filled by the remaining trustees; and, in default of their so making an appointment within three months, the appointment to fill the vacancy shall be made by the supreme court, on the petition of any inhabitant of the interested city, village or town, and after due notice to the other trustees and to the mayor of the city, president of the village or supervisor of the town. Said trustees shall be subject to removal by said court for malfeasance or misfeasance in office, upon such notice and after trial in such manner as said court shall direct.

Amended by L. 1910, ch. 163, in effect April 25, 1910.

§ 143. Management and appropriation of property.

Trustees created under the provisions of this article shall have the custody and management of all the property of such corporation, and shall appropriate the same, so far as the terms, provisions and conditions of the donations will permit, for the purpose of aiding and instructing children, or for providing suitable grounds for such a public park or parks and properly preparing, beautifying, embellishing and keeping up and maintaining the same, or for furnishing and supplying such library with a suitable and proper edifice, rooms, furniture, books, maps, magazines and whatever may be necessary to make, keep up and maintain a good and complete library, or for one or more of such purposes, and paying the expenses of the trust.

Demising lands donated to the corporation and investing and keeping money invested at interest, and using the rents and interest therefrom for aiding and instructing children or for park purposes or library purposes, shall be deemed to be an appropriation of such property for said purposes.

Amended by L. 1910, ch. 163. In effect April 25, 1910.

§ 144. Parks and libraries to be free.

All parks and libraries existing under this article shall be free and open to the public for use and enjoyment, subject only to such reasonable rules and regulations as the trustees from time to time shall adopt and promulgate.

§ 145. Subject to visitation of supreme court.

All corporations existing under this article, together with their books and vouchers, shall be subject to the visitation and inspection of the justices of the supreme court, or of any person or persons who shall be appointed by the supreme court for that purpose; and it shall be the duty of the trustees or a majority of them, in the month of December in each year, to make and file in the office of the county clerk of the county in which the interested city, village or town is situate, a certificate under their hands, stating the names of the trustees and officers of such corporation, with an inventory of the property, effects and liabilities thereof, with an affidavit of the truth of such inventory and certificate. Said trustees shall be entitled to such compensation as said court shall fix. Said court shall also have power to control the discretion of said trustees in determining what property may be demised and for how long; also how much money may be invested and kept invested on interest to produce an income for the purpose of aiding and instructing children or to keep up and maintain the parks or libraries, or either of such purposes; and also in a summary way to determine the reasonableness of any rules and regulations, upon complaint of any inhabitant of the interested city, village or town, and upon notice to said trustees.

Amended by L. 1910, ch. 163. In effect April 25, 1910.

§ 146. Devises and bequests restricted.

This article shall not be construed or held to authorize any devise or bequest whatever, unless the will was executed at least two months before the decease of the testator or testatrix, nor of more than one-half of the estate of the testator or testatrix over and above the payment of debts, liabilities and expenses, in case he or she shall leave a husband, wife, child, or parent him or her surviving.

ARTICLE 7-A.

Local Boards of Child Welfare.

- Section 148.** Local boards of child welfare established.
149. Appointment of boards in counties.
150. Appointment of boards in cities.
151. Members to serve without compensation. Expense only to be paid.
152. General powers and duties of board. State board of charities may revoke allowances.
153. Regulations governing allowances.
154. Appropriations and limitations for purposes of article.
155. Penalties.

§ 148. Local boards of child welfare established.

There shall be a local board of child welfare in each county of the state not wholly within a city, and in each city wholly including one or more counties, which, pursuant to this article, may grant allowances to widowed mothers with one or more children under the age of sixteen years, in order that such children may be suitably cared for in their homes by such mothers.

Added by L. 1915, ch. 228. In effect July 1, 1915.

§ 149. Appointment of boards in counties.

The board of child welfare of a county shall consist of seven members of which the county superintendent of the poor shall be ex-officio member. If any county have more than one superintendent of the poor, the county judge shall designate, by writing, filed with the county clerk, the superintendent who shall serve as a member of such board. The other six members of the board shall be appointed by the county judge for such terms that the term of one appointive member of the board shall expire each year thereafter. Upon the expiration of the term of office of a member of the board, his successor shall be appointed by the county judge for a full term of six years. If a vacancy occur, otherwise than by expiration of terms, in the office of an appointive member of the board, it shall be filled for the unexpired term. At least two members of the board shall be women. Appointments shall be made in writing and filed with the county clerk.

Added by L. 1915, ch. 228. In effect July 1, 1915.

§ 150. Appointment of boards in cities.

The board of child welfare of a city wholly including one or more counties shall consist of nine members. The members of the board shall be appointed by the mayor for such terms that the term of one member of the board shall expire each year thereafter. Upon the expiration of the term of office of a member of the board, his successor shall be appointed by the mayor for a full term of nine years. If a vacancy occur, otherwise than by expiration of term in the office of a member of the board, it shall be filled for the unexpired term. At least three members of the board shall be women. The members of such a board heretofore appointed by the mayor are continued in office

until the expiration of their terms, respectively. The additional appointive member of such board shall be appointed by the mayor, within ten days after this section as amended takes effect, for a full term of nine years.

Added by L. 1915, Ch. 228 and amended by L. 1916, Ch. 504, in effect May 10, 1916.

§ 151. Members to serve without compensation; expenses, et cetera.

The members of the board of child welfare, as herein provided, shall receive no compensation for their services as members of such board, but, after appropriations have been duly made as herein provided, they shall be entitled to the actual and necessary expenses incurred by them in properly discharging their official duties, whether while making investigations or otherwise.

Added by L. 1915, Ch. 228, in effect July 1, 1915.

§ 152. General powers and duties of board; state board of charities may revoke allowances.

A board of child welfare shall:

1. Meet and organize within ten days after appointment, and fix the dates for its meetings, which shall be held at least monthly.

2. Elect a chairman, and appoint a secretary of the board, who shall hold office subject to the pleasure of the board.

3. Establish an office and, when specific appropriations have been made for such purposes, employ such officers and employees as may be provided for by the board of supervisors of a county or by the board of estimate and apportionment and the board of aldermen of a city.

4. Establish rules and regulations for the conduct of its business, which shall provide for the careful investigation of all applicants for allowances and the adequate supervision of all persons receiving allowances; such investigations and supervisions to be made by the board and without incurring any unnecessary expense. Reports must be filed at least quarterly by the agents, visitors or representatives of the board, with respect to the families receiving allowances granted by the board.

Subd. amended by L. 1916, Ch. 504, in effect May 10, 1916.

5. Render to the board of supervisors, if in counties, and to the mayor, if in cities, a verified account of all moneys received and expended by them, or under their direction, and of all their proceedings in such manner and form as may be required by the board or the mayor, as the case may be; if required by the board of supervisors or mayor more frequent reports must be given covering fractional parts of a year.

Subd. amended by L. 1917, Ch. 551, in effect May 18, 1917.

6. Submit annually to the proper fiscal authorities of the county or city an estimate of the funds required to carry out the purposes of this article; in a county such estimate shall be furnished before the annual meeting of the board of supervisors for appropriating moneys and levying taxes; in a city, it shall be submitted at the time provided by law for the submission of other departmental estimates.

7. Be subject to the general supervision of the state board of charities, and make such reports as the state board of charities may require. Any person

who has knowledge that relief is being granted in violation of the requirements of this act, may file a verified complaint, in writing, with the state board of charities, setting forth the particulars of such violation, and said state board of charities shall have power, after proper investigation, to revoke allowances or to make such order as it may deem just and equitable and such order shall be complied with by the local board of child welfare.

Added by L. 1915, ch. 228. In effect July 1, 1915.

§ 153. Regulation governing allowances.

The following provisions shall govern the granting of allowances pursuant to this article:

1. A board of child welfare may, in its discretion, when funds have been appropriated therefor, grant an allowance to any dependent widow residing in the county or city wherein she applies for an allowance, and who is deemed by the local board of child welfare to be a proper person mentally, morally and physically to care for and bring up such child or children, provided such widow has been a resident of the county or of the city wherein the application for an allowance is made for a period of two years immediately preceding the application, and whose deceased husband was a citizen of the United States and a resident of the state at the time of his death.

2. Such allowance shall be made by a majority vote of the board duly entered upon the minutes of any regular or special meeting, and may be increased, diminished or totally withdrawn in the discretion of the local board of child welfare.

3. Before granting an allowance the board shall not only determine that the mother is a suitable person to bring up her own children and that aid is necessary to enable her to do so, but further that if such aid is not granted the child or children must be cared for in an institutional home.

4. Such an allowance or allowances shall not exceed the amount or amounts which it would be necessary to pay an institutional home for the care of such widow's child or children.

5. An allowance granted by the board shall be paid out of any moneys appropriated by the local authorities for such purposes, or otherwise available by the board for such purpose; such local authorities are authorized to appropriate and make available for the board of child welfare and to include in the tax levy for such county or city, such sum or sums, as in their judgment, may be necessary to carry out the provisions of this article; such moneys to be kept in a separate fund and to be disbursed by the proper county or city official authorities on orders of the local board of child welfare and upon proper vouchers therefor.

6. An application for allowance may be made directly to the local board of child welfare or to any member of the board.

7. A full and complete record shall be kept in every case coming either directly or indirectly within the jurisdiction of the board; such record to be available to the proper authorities of county or city interested therein.

8. An allowance made by the board shall not be for a longer continuous period than six months without renewal, which allowance may be continued

from time to time at same or different amounts, for similar periods or less, either successively or intermittently or may be revoked at the pleasure of the local board of child welfare.

Added by L. 1915, ch. 228. In effect July 1, 1915.

§ 154. Appropriations and Limitations for purposes of article.

The board of supervisors of a county, and the board of estimate and apportionment and the board of aldermen of a city to which this article is applicable, are hereby authorized and empowered annually to appropriate such a sum, if any, as, in their discretion and judgment, may be needed to carry out the provisions of this article, including expenses for administration and relief; it is further provided that no board of child welfare shall expend or contract to expend under the provisions of this act or otherwise, any public moneys not specifically appropriated as herein provided; the board of supervisors of any county may determine, as provided in section one hundred and thirty-eight of the state poor law, the same being chapter forty-two of the consolidated laws, whether or not the actual expense for the relief of widowed mothers and their children under this article shall be a charge upon the county or upon the respective towns thereof. Each such board of child welfare shall, from time to time, audit and cause to be paid all expenses for administration and the wages and salaries of its employees.

Added by L. 1915, Ch. 228 and amended by L. 1917, Ch. 551, in effect May 18, 1917.

§ 155. Penalties.

1. A person who shall procure or attempt to procure, directly or indirectly, any allowance for relief under this article, for or on account of a person not entitled thereto, or shall knowingly or wilfully pay or permit to be paid any allowance to a person not entitled thereto, shall be guilty of a misdemeanor.

2. The members of a board of child welfare, established by this act, shall be appointed within sixty days after this act takes effect.

Added by L. 1915, Ch. 228, in effect July 1, 1915.

ARTICLE 2.

Cemeteries.

Section 160. Acquisition of lands for cemetery purposes.

161. Title may be acquired by condemnation.

162. Money may be borrowed for the purpose.

163. Lot owners' rights.

§ 160. Acquisition of lands for cemetery purposes.

It shall be lawful for the common council of any city, or the trustees of any incorporated village in this state, although such cemetery is discov-

nected from and out of the limits of any city or village, to acquire by deed, devise or otherwise, such land as it may require for burial purposes and the proper ornamentation in connection therewith, or land for such purposes, in addition to such land as it may already hold, or is authorized to hold; and to hold, use and possess the same in like manner with the like rights, privileges and authority, and subject to the like duties and liabilities as apply to the other lands so held by said city or village.

The provisions of this section shall not apply to the counties of New York, Kings, Queens and Westchester.

§ 161. Title may be acquired by condemnation.

If the said common council or board of trustees shall be unable to agree with the owners of such lands for the purchase thereof, the said common council or board of trustees may proceed to acquire the title thereto in the manner prescribed by the condemnation law. The amount paid for such lands, by such common council or board of trustees as aforesaid, and all the expenses attending the same, with the expenses of fences and improving the same, shall be assessed and collected by a general tax upon all the taxable property of such city or village, in the same manner as other city or village taxes are assessed and collected.

§ 162. Money may be borrowed for the purpose.

The common council of said cities and the board of trustees of said villages are authorized to borrow the sum of money provided for by section one hundred and sixty-one of this article and in anticipation of the tax aforesaid, or so much thereof as may be necessary to purchase the burial lot as aforesaid, and procure a good title in fee to the same.

§ 163. Lot owners' rights.

Lots in such cemeteries shall be held indivisible, and upon the decease of a proprietor of such lot the title thereto shall descend to his heirs-at-law or devisees, subject, however, to the following limitations and conditions: If he leaves a widow and children, they shall have in common the possession, care and control of such lot during her life. If he leaves a widow and no children, she shall have the possession, care and control of such lot during her life. If he leaves children and no widow, they, or the survivors of them, shall in common have the possession, care and control of such lot during the life of the survivor of them. The parties having such possession, care and control of such lot during the term thereof, may erect a monument and make other permanent improvements thereon. The widow shall have the right of interment for her body in such lot, or in a tomb in such lot, and a right to have her body remain permanently interred or entombed therein, except that her body may be removed therefrom to some other family lot or tomb with the consent of her heirs. At any time when more than one person is entitled to the possession, care or control of such lot, the persons so entitled thereto shall designate in writing to the clerk of the corporation which of their number shall represent the lot, and on their failure to designate, the board of trustees or directors or commissioners of the corporation or commission shall enter of record which of said parties shall represent the lot, while such failure continues. The widow may at any time release her right in such lot, but no conveyance or devise by any other person shall deprive her of such right.

ARTICLE 9.

Regulation of Use of Bicycles and Similar Vehicles.

Section 180. Ordinances to regulate use of bicycles and similar vehicles.

181. Limitation of power to make ordinances.

182. Security for appearance upon arrest.

§ 180. Ordinances to regulate use of bicycles and similar vehicles.

The municipal officers and boards in the several cities, towns and villages of this state now having the authority to enact such ordinances, may pass ordinances regulating the use of bicycles, tricycles and similar vehicles on the public highways, streets, avenues, walks, parks and public places within their limits in accordance with the following provisions, and not otherwise:

1. To require all bicycles, tricycles and similar vehicles when ridden on such public highways, streets, avenues, walks or public places to have attached thereto or carried therewith a light of such illuminating power as to be plainly seen two hundred feet ahead, and kept lighted between one hour after sunset and one hour before sunrise; but this section shall not apply to any rider whose light has become extinguished or who is necessarily absent from his home without a light, when going at a pace not exceeding six miles an hour, when an audible signal is given as provided in subdivision two of this section, as often as thirty feet are passed over.

2. To require riders of all such bicycles, tricycles or similar vehicles to give an alarm by bell, whistle or otherwise, which may be heard one hundred feet distant, when about to meet or pass pedestrians and when about to meet or pass other vehicles.

3. To regulate the rate of speed at which it may be lawful to ride such bicycles, tricycles or similar vehicles; provided, however, that cyclists shall not be restricted to a rate of speed slower than is allowed any other kind or class of vehicle.

4. To regulate or prohibit coasting or proceeding by inertia or momentum with the feet off the pedals; the carrying of children under five years of age upon bicycles; the observance by cyclists of such rules of the road as are established by the highway law; to permit the authorities of such municipality having charge of the public highways, streets, squares or parks, in their discretion, upon any special occasion, to grant permits to any person or persons to ride such machines during a specified time, upon specified portions of the public streets or highways of such city, town or village, at any rate of speed, and annex such other reasonable conditions to such permits as they shall deem proper; and the said authorities of such municipality may also, under such conditions as they may deem proper, permit the use of velocipedes and other similar machines by children on any sidewalk in any public way, square or park in such municipality.

5. To regulate or prohibit the riding of any bicycles, tricycles or similar vehicles upon the sidewalks, within the limits of any city, town or village; except that no city, town or village shall have any power to prohibit the riding of any bicycles upon any sidewalk within the limits of such city, town or village when said sidewalk shall have been or shall be hereafter constructed solely at the expense of wheelmen or cyclists by and with the consent of the officers having jurisdiction therein, unless the road or street in front of said sidewalk is paved with some smooth and permanent pave-

ment like asphalt or brick, and maintained in a condition suitable for the use of cycles. The term "sidewalk," as used in this article, means any sidewalk laid out as such by any city, town or village, or by the owners of the abutting lands, which is reserved by custom for the use of pedestrians, and which has been especially prepared for their use, but not including foot-paths or portions of public roads lying outside of the thickly settled parts of cities and towns which are worn only by travel, and are not improved by the public authorities, or by the abutting owners.

6. To provide that every person violating any such ordinances shall be punished by a fine not exceeding the sum of five dollars for each offense, and in case of the nonpayment of such fine, by imprisonment in the county jail not exceeding one day for each dollar of such fine, in the discretion of the court or magistrate.

§ 181. Limitation of power to make ordinances.

No city, town or village shall have any power to make any ordinance, by-law or regulation respecting the use of bicycles or tricycles except as provided in this article; and except as provided in this article, no ordinance, by-law or regulation heretofore or hereafter made by a city, town or village in respect to bicycles or tricycles shall have any force or effect. Nothing in this article shall affect the jurisdiction of sidepath commissioners nor the use of sidepaths.

§ 182. Security for appearance upon arrest.

Any person arrested for the violation of any of the provisions of any ordinance or by-law adopted as provided in this article, may tender at the time of his arrest, or at any time before the hearing thereon, either five dollars in current money, or his bicycle or similar vehicle, as security for his appearance in court to make answer to the charge of violating the provisions of any ordinance or by-law adopted as provided in this article; and the officer making the arrest shall accept the security which the rider may offer, as aforesaid, for his appearance, before the most convenient court or magistrate, to be specified by said officer at a time to be fixed by him not less than one day, in said city, village or town having jurisdiction of the offense, and such security shall be forthwith delivered, by such officer, to such court or magistrate. In case the person arrested shall fail to appear and answer to such charge at the time so specified or at such other time to which the matter shall have been adjourned, such security shall be forfeited, and if money, shall be disposed of in the same manner as other fines are disposed of by such court or magistrate; and if a bicycle or similar vehicle, it may be sold under the direction of such court or magistrate at public sale, a notice of which sale shall be posted in three public places in such city, town or village, and a copy thereof served personally or by mail upon the person who tendered the same at least six days before such sale, and five dollars of the money received upon such sale shall be disposed of in the same manner as other fines collected by such court or magistrate, and the remainder of the money received upon such sale shall be paid to the owner of such bicycle or other similar vehicle on demand.

ARTICLE 10.

Firemen and Policemen.

Section 200. Defining qualifications of exempt volunteer firemen.

200a. Person serving in more than one company or department.

200b. Leaves of absence to be granted to volunteer firemen enlisted in military or naval service in time of war.

201. Rights and privileges of exempt volunteer firemen.

202. Certificate to be issued to exempt volunteer firemen.

203. List of exempt volunteer firemen to be filed.

204. Qualifications necessary to entitle to certain *privileges.

205. Payment to injured or representatives of deceased volunteer firemen.

206. Certificate to policemen and firemen; free transportation; use of telegraph lines and telephones.

207. Penalty for improper use of certificates.

§ 200. Defining qualifications of exempt volunteer firemen.

An exempt volunteer fireman is hereby declared to be a person who as a member of a volunteer fire company duly organized under the laws of the state of New York shall have at any time after attaining the age of eighteen years faithfully actually performed service in the protection of life and property from fire within the territory immediately protected by the company of which he is a member and while a bona fide resident and, if of full age, an elector therein for a period of five consecutive years, or, if such company shall have been sooner disbanded upon the organization of a paid fire department, for a period of at least one year and shall also have been a member of such volunteer fire company at the time it shall have been disbanded; but the limitation of one year's service shall not apply to a volunteer fireman who was a member of a fire company which was disbanded prior to January first, nineteen hundred and two.

§ 200-a. Person serving in more than one company or department.

When any person has served as a volunteer fireman as provided in section two hundred, for less than five years, and while in good standing in the company or department of which he was a member, has resigned therefrom or has been transferred from one company to another, he shall be entitled to a certificate as provided in section two hundred and two for the time he has actually served. And when any person has served five years as a volunteer fireman in one or more companies or departments as provided in section two hundred, with an intermission of not more than three months between his time of service in one company or department and another, he shall be deemed an exempt volunteer fireman and entitled to all the rights of a volunteer fireman in the same manner and to the same extent as if he had served the full period of five years in one company or department.

Added by L. 1910, ch. 119, in effect April 20, 1910.

§ 200-b. Leaves of absence to be granted to volunteer firemen enlisted in military or naval service in time of war.

When any person has served as a volunteer fireman as provided in section two hundred, for less than five years, and while in good standing in the company or department of which he was a member, and has enlisted or been drafted into military or naval service of the United States during the war between the United States and Germany and the United States and Austro-Hungary, or any other war between the United States and any other nation, and by so enlisting or drafting into the military or naval service of the United States in any branch thereof, is prevented from actually performing duty as a volunteer fireman in the company or department in which he is at that time a member shall be given a leave of absence from said company or department for the entire period in which he shall perform said military or naval service in any branch of the United States army or navy, he shall be entitled to a certificate as provided in section two hundred and two for the time he has actually served. And when any person has served five years as a volunteer fire-

* So in original. See § 204.

man in one or more companies or departments as provided in section two hundred, with an intermission of the time actually spent by him in the military or naval service of the United States in any branch thereof, he shall be deemed an exempt volunteer fireman and entitled to all the rights of a volunteer fireman in the same manner and to the same extent as if he had served the full period of five consecutive years in one company or department. (Added by L. 1918, ch. 19, in effect February 28, 1918.)

§ 201. Rights and privileges of exempt volunteer firemen.

In case any city, town or village in this state shall organize a paid fire department and thereby deprive any volunteer fireman who has faithfully actually performed service in the protection of life and property within the territory immediately protected by his company and while a bona fide resident and if of full age an elector therein, of the right to serve a full term of five consecutive years such fireman shall be entitled to a full and honorable discharge; and to all the rights and privileges granted by the laws of this state to volunteer firemen, provided, however, that if such paid department has been organized since the first day of January in the year nineteen hundred and two, he shall have so served for a consecutive period of at least one year immediately preceding the installation of said paid fire department.

§ 202. Certificate to be issued to exempt volunteer firemen.

Any person described in section two hundred or two hundred and one shall be entitled to a certificate from the company in which he served or of which he was a member at the time of its disbandment which shall show the date of the entrance of such fireman upon his service, the period of his consecutive service, that he was a bona fide resident and if of full age an elector within the territory immediately protected by his company during the time of such service, that he was honorably discharged from such company after five years' consecutive service; was in good standing in his company after completing such five years of consecutive service and at the time of applying for such certificate; or that he was in good standing in his company at the time of the disbandment thereof. Such certificate shall be signed by the president, captain, foreman or secretary of the company and shall be acknowledged by such officers before an officer commissioned to take acknowledgments, and shall also have attached thereto a certificate attested by the affidavit of the secretary, clerk or other person having the custody of the company's record of membership, that the statements of fact contained in said certificate are true, and the affidavit and acknowledgment shall be substantially in the following form:

State of New York, }
County of, } ss.

On this day of, in the year, before me personally came, to me known and by me known to be the same person described in and who executed the foregoing certificate and they severally duly acknowledged to me that they executed the same and the said being by me duly sworn, deposes and says, that he is of the company aforesaid and is the custodian of the records of its membership and that the facts above stated relating to the service and residence of the person described in such certificate are true.

.....
Notary Public.

Such certificate so attested shall in all courts of the state and in the offices of all persons clothed with power of appointment or removal in the service of this state and in the several cities, counties, towns and villages thereof, be presumptive evidence of the facts therein stated.

Amended by L. 1909, ch. 240, in effect April 22, 1909.

§ 203. List of exempt volunteer firemen to be filed.

In case of a company disbanded by the organization of a paid department in lieu thereof, the officers of every volunteer fire, engine, hose and hook and ladder company shall within ninety days after such company has been disbanded file in the office of the clerk of the county in which said company

was located a list containing the name of every person who was a member of such volunteer company and who is entitled to the exemption certificate in accordance with the provisions of this article. Upon such list being filed the county clerk of the county in which such company operated shall sign and deliver the exemption certificate provided for in this article to the person entitled thereto whose name appears upon the list filed with him as aforesaid, but the same shall, nevertheless, be attested by the secretary or clerk or other person having the custody of the membership records of the disbanded company and in the manner specified in this article.

§ 204. Qualifications necessary to entitle to certain *exemptions.

No person who became a member of a volunteer fire organization within the state since the first day of January nineteen hundred and two, or who shall have thereafter become such member who shall not possess the qualifications prescribed by this article shall be entitled to any of the exemptions and privileges secured to volunteer firemen by the civil service law of this state.

§ 205. Payments to injured or representatives of deceased volunteer firemen.

First. If an active member of a volunteer fire company in any city, incorporated village or in any fire district of a town outside of an incorporated village or in any part of a town protected by a volunteer fire company incorporated under the provisions of the membership corporations law, dies from injuries incurred while in the performance of his duties as such fireman within one year thereafter, the city, village, or town shall pay as follows:

a. If such volunteer fireman is a member of a volunteer fire company located in any city in which a pension fund is maintained, the relatives of such volunteer fireman shall be entitled to a pension in the same manner and at the same rates as if he were a member of the paid fire department of such city.

b. If in a city not maintaining a pension fund for the benefit of the members of the paid fire department therein, such city shall pay to the executor or administrator of such deceased volunteer fireman the sum of twenty-five hundred dollars.

c. If in any other place the sum of fifteen hundred dollars shall be paid to the executor or administrator of such deceased volunteer fireman.

Second. Any such volunteer fireman who shall become permanently incapacitated for performing the full duties of a volunteer fireman by reason of disease or disability caused or induced by actual performance of the duties of his position, without fault or misconduct on his part, shall

a. If a member of a volunteer fire company located in any city in which a pension fund is maintained, be paid a pension in the same manner and at the same rate as if he were a member of the paid fire department of such city.

b. If a member of a volunteer fire company in any other place, be paid one-half the amount which would have been payable in case of death to his executor or administrator under the provisions of subdivision first of this section.

Third. In cities such sum shall be a city charge and shall be audited and paid in the same manner as other city charges, except that no part of the moneys payable under this section shall be paid from the pension funds of the paid departments therein. In villages such sum shall be a village charge and shall be audited and paid in the same manner as village charges, and shall be assessed upon the property and persons liable to taxation in said village, and levied and collected in the same manner as village taxes. If such fireman was a member of a fire company in a fire district outside of a city or an incorporated village, such sum shall be a town charge, audited and paid in the same manner as town charges, and shall be assessed upon the property and persons in such fire district liable to taxation, and levied and collected in the same manner as town charges. If such fireman was a member of a fire company incorporated under the membership corporations law, located outside of a city, village or fire district, such sum shall be a town charge audited and paid as town charges and shall be assessed upon the property and persons liable

* So in original.

to taxation in the territory protected by such fire company and levied and collected in the same manner as town charges therein.

Provided, however, that any money paid to an executor or administrator under any of the provisions of this section shall be distributed in the manner provided by law for the distribution of personal property, and all money paid under this section shall be exempt from any process for the collection of debts either against the volunteer firemen or any beneficiary to whom the same is paid under the provisions of this section.

Fourth. Any controversy arising at any time under the provisions of this section shall be determined by the county judge of the county in which the volunteer fire company is located and of which such volunteer fireman is a member. For that purpose, any party may present a petition to such county judge, setting forth the facts and rights which are claimed. A copy of such petition and notice of the time and place when the same will be presented shall be served on all persons interested therein, at least eight days prior to such presentation.

Amended by L. 1914, Ch. 400, in effect April 17, 1914.

§ 206. Certificate to policemen and firemen; free transportation; use of telegraph lines and telephones.

The mayor of each city of this state and the president of each incorporated village may issue, under the seal of his office, to each policeman and fireman appointed by the duly-constituted authorities of such city or village, a certificate of the appointment and qualification of such policeman or fireman as such, and specifying the duration of his term of office; and it shall thereupon be the duty of every street surface and elevated railroad company carrying on business within such city or village, to transport every such policeman or fireman free of charge while he is traveling in the course of the performance of the duties of his office. Every telegraph or telephone company engaged in business within such city or village, shall afford to such policeman or fireman the use of its telegraph lines or telephones for the purpose of making and receiving reports and communications in the course of the performance of his official duties.

§ 207. Penalty for improper use of certificates.

Every policeman or fireman who shall permit any other person to use the certificate issued to him as provided by the last section, or shall present or make use of the same, except while acting in the course of the performance of his official duties, or who shall use such certificate after the expiration of his term of office or his resignation or removal therefrom, shall be deemed guilty of a misdemeanor.

ARTICLE 11.

Acquisition of Lands by the United States.

Section 210. United States may acquire land in cities.

211. Certified copy of transfer to be filed.

212. Jurisdiction of state not affected.

§ 210. United States may acquire land in cities.

The United States is hereby authorized to acquire by condemnation, purchase or gift in conformity with the laws of this state, one or more pieces of land not exceeding two acres in extent, in any city or village of this state, for the purpose of erecting and maintaining thereon a public building for the accommodation of post-offices and other governmental offices in any such city or village.

§ 211. Certified copy of transfer to be filed.

Whenever the United States, by any agent authorized under the hand and seal of any head of an executive department of the government of the United States, shall cause to be filed and recorded in the office of the secretary of state of this state, certified copies of the record or transfer to the United States of any such pieces of land which had been acquired by the United States for the purposes specified in section two hundred and ten of this article, together with maps and descriptions of such lands by metes and bounds, exclusive jurisdiction, except as provided in section two hundred and twelve, is

thereupon ceded to the United States over the lands so described, during the time that the United States shall be or remain the owner thereof.

§ 212. Jurisdiction of state not affected.

The jurisdiction ceded to the United States as prescribed by this article shall not prevent the execution on the land acquired for the purposes specified in section two hundred and ten of any process civil or criminal, issued under the authority of the state, except as such process might affect the property of the United States thereon.

ARTICLE 12.

Railroad Aid Bonds.

Section 220. Apportionment on formation of new towns.

221. Duty of railroad commissioners.

222. Assessors to make separate lists.

223. Duty of supervisor.

224. Application of the last four sections.

225. Supervisor to execute a bond.

226. Transfer of duties of railroad commissioners to supervisors.

227. Such supervisors to give security.

228. Railroad commissioners to deliver to supervisor property.

229. Penalty of bond to be fixed by town auditors.

230. Compensation of supervisor.

231. Presentation of claims to court of claims.

232. Investment and application of award.

233. Award or judgment.

§ 220. Apportionment on formation of new towns.

Whenever any board of supervisors shall form a new town within its respective county, from parts of other towns, or town which shall have bonded to aid in the construction of any railroad under any act authorizing the same, and such bonds, or any part thereof, shall remain unpaid, or when any board of supervisors shall change the line of any town which shall have bonded to aid in the construction of any railroad in this state, and such bonds, or any part thereof, shall remain unpaid, the new town so formed and the part taken from a town and added to another town shall pay a proportionate share of such bonds as shall remain unpaid, which share shall be ascertained from the assessed valuation of such town or towns as contained in the last equalized valuation of the assessment-roll, made prior to the formation of such town or the change of any such town line.

§ 221. Duty of railroad commissioners.

It shall be the duty of the railroad commissioners of the town, any part of whose territory shall have been detached as aforesaid, to render a true statement to the board of supervisors, as required by law, of the amount necessary to pay the proportionate share belonging to the territory detached from their town, which may be then coming due, and the board of supervisors shall add such proportionate share to the sums to be collected from the town so formed, or to the part which shall have been detached from a town and added to another town, to be collected as prescribed by law.

§ 222. Assessors to make separate lists.

The assessors of the town to which shall have been added a part of another town, shall yearly, until such bonds be paid, make a separate and distinct list of the taxable inhabitants and lands contained in the territory so annexed in the assessment-roll of the said town, in all respects similar in form and manner to the assessment-roll as now made. Said list shall be designated in such roll "List of annexed lands and inhabitants."

§ 223. Duty of supervisors.

Such proportionate share of moneys collected as provided in section two hundred and twenty-one of this article shall be paid by the supervisor of the town wherein collected to the railroad commissioners of the town or towns from which such territory shall have been detached, and such commissioners shall use such moneys for the payment of the bonds issued in the same manner as they are required to use the moneys raised in their own town.

§ 224. Application of the last four sections.

The provisions of sections two hundred and twenty to two hundred and twenty-three, inclusive, shall apply to all cases where a new town shall have been formed, or the line of any town shall have been changed by the board of supervisors of any county since the first day of January, eighteen hundred and seventy-nine, where no proceedings have been taken under chapter five hundred and ninety-seven of the laws of eighteen hundred and seventy.

§ 225. Supervisor to execute a bond.

The supervisor of any town or ward of any city receiving or disbursing any funds on account of the bonded railroad debt of said town or ward, before receiving or disbursing any such funds by virtue of any law of this state, shall execute to the town a bond with sureties who shall be able to justify in at least double the amount of the money to be received by him, as near as can be ascertained, said bond to be approved by the town clerk and conditioned for the proper and due disbursement of moneys received on account of bonded railroad debt and the faithful accounting thereof, which bond when given will be filed with the town clerk.

§ 226. Transfer of duties of railroad commissioners to supervisors.

Every town in which railroad commissioners heretofore appointed or elected under the provisions of any general or special statute of this state authorizing towns to incur indebtedness in aid of the construction of any railroad, remain in office, and in which the duties imposed by such statutes, upon such commissioners, are not yet fully performed, is hereby authorized and empowered, at an annual town meeting, or at a special town meeting called for such purpose in the manner prescribed by law, to authorize the transfer of the powers and duties of such railroad commissioner or commissioners to the supervisor of such town, by a resolution to such effect passed and adopted by a majority vote of all persons voting at such town meeting.

§ 227. Such supervisor to give security.

Within twenty days after the passage of such resolution at such town meeting the said supervisor shall file in the office of the town clerk of said town a bond running to the people of the state of New York, executed by himself and two or more sureties, in a penalty to be fixed by the board of town auditors of said town as hereinafter provided, and conditioned for the faithful performance of the duties of railroad commissioners transferred to him under said resolution, and the payment over according to law of all moneys coming into his hands by reason of such transfer; such bonds also to be approved as to form and sufficiency of sureties by the county judge of the county in which said town is located.

§ 228. Railroad commissioners to deliver to supervisor property.

Forthwith, upon the filing of such bond as aforesaid, the town clerk of the town shall indorse upon copies of such bond to be provided by the said supervisor, a certificate to the effect that the said bond has been filed in the office of such town clerk, and said supervisor shall serve such copies and certificate upon the railroad commissioners respectively, and thereupon it shall be the duty of such railroad commissioners to pay over to such supervisor all moneys remaining in their hands as railroad commissioners of

such town, and to deliver all books, papers, securities and other property belonging to said town and remaining in their hands as such commissioners unto the said supervisor, and to take his receipt therefor, which receipt shall be to them a proper and sufficient voucher. Immediately upon the delivery of said moneys and property by the said railroad commissioners to the supervisor, as aforesaid, and in the manner aforesaid, the office of railroad commissioner of such town shall wholly cease, and the said supervisor shall thereupon be invested with all the powers conferred upon such railroad commissioners by the statute and proceedings under and by which they were appointed, and shall be subject to all the duties imposed upon such commissioners by such statute, and all securities and evidences of debt transferred by said commissioners to said supervisor as aforesaid, which by the terms thereof are payable to the said railroad commissioners, shall be paid when due to said supervisor, upon his indorsement as supervisor, in the same manner and to the same effect as if indorsed by said railroad commissioners.

§ 229. Penalty of bond to be fixed by town auditors.

The board of town auditors shall meet for the purpose of fixing the penalty of the bond of said supervisors, as provided in section two hundred and twenty-seven of this article, at the office of the town clerk within ten days after the town meeting at which the resolution hereinbefore provided for was passed, upon a day to be fixed by said town clerk, whereof each member of said board shall be notified by said clerk either personally or by mail, at least three days before the time fixed for said meeting. In fixing the penalty of the bond to be given by said supervisor under the provisions of section two hundred and twenty-seven of this article, said board of town auditors shall take into consideration the amount of moneys likely to come into the hands of such supervisor by reason of the additional duties imposed upon him by this article. Hereafter, in a town in which the duties of railroad commissioner have been transferred to the supervisor, the general bond given by such officer, conditioned to safely hold and pay over all moneys coming into his hands and belonging to said town, shall be deemed to include and be a security for the payment over of all moneys coming into the hands of such supervisor under and by reason of the provisions of this article.

§ 230. Compensation of supervisor.

For the performance of the additional duties devolved upon him under the provisions of this article, such supervisor shall be entitled to reasonable compensation, to be fixed by the board of town auditors of such town.

§ 231. Presentation of claims to court of claims.

Any county of this state, containing one or more towns, villages or cities which have heretofore issued bonds to aid in the construction of any railroad passing through such towns, villages or cities may present to the court of claims a claim for the amount of state taxes collected from or paid by any such railroad within the several towns, villages or cities of such county which were so bonded to aid in the construction of any such railroad, since the eighteenth day of May, eighteen hundred and sixty-nine, and which said taxes were paid by the county treasurer of such county to the state treasurer. Jurisdiction is hereby conferred upon the court of claims to hear,

audit and determine such claims and to make awards and render judgments therefor against the state and in favor of such claimants.

§ 232. Investment and application of award.

The amount which shall be awarded to any county as provided in section two hundred and thirty-one of this chapter, shall be paid to the county treasurer of such county; and such county treasurer shall invest or apply the same in the manner and for the purpose provided by section thirteen of this chapter, except that in case such county shall have heretofore paid to any such town, village or city, such state taxes or any portion thereof, or in case such county treasurer has heretofore set aside such state taxes or any portion thereof, for the benefit of such town, village or city, in the manner provided by said section thirteen of this chapter, then and in that case, such moneys or the portion thereof so paid or set aside as aforesaid, shall be used and applied by such county treasurer for the general purposes of the county.

§ 233. Award or judgment.

No award shall be made or judgment rendered herein against the state unless the facts proved shall make out a case against the state, which would create a liability, were the same established in a court of law or equity against an individual or corporation or municipality; and in case such liability shall be satisfactorily established, then the court of claims shall award to and render judgment for the claimants for such sums as shall be just and equitable, notwithstanding the lapse of time since the accruing of said damages, provided any claim hereunder accruing prior to the twenty-ninth day of April, nineteen hundred and seven, shall have been filed with the court of claims within one year thereafter and provided any claim hereunder accruing after said twenty-ninth day of April, nineteen hundred and seven, shall be filed with the court of claims within two years after the accrual thereof.

ARTICLE 12-a.*

City and Village Planning Commissions.

Section 234. Creation, appointment and qualifications.

235. Officers, expenses and assistance.

236. General powers.

237. Maps and recommendations.

238. Private streets.

239. Rules.

239a. Construction of article.

§ 234. Creation, appointment and qualifications.

Each city and incorporated village is hereby authorized and empowered to create a commission to be known as the city or village planning commission. Such commission shall be so created in incorporated villages by resolution of the trustees, in cities by ordinance of the common council, except that in cities of the first class, having more than a million inhabitants it shall be by resolution of the board of estimate and apportionment or other

* Note.—This article added by L. 1913, ch. 699. In effect May 24, 1913.

similar local authority. In cities of the first class such commission shall consist of not more than eleven, in cities of the second class of not more than nine, in cities of the third class and incorporated villages of not more than seven members. Such ordinance or resolution shall specify the public officer or body of said municipality, that shall appoint such commissioners, and shall provide that the appointment of as nearly as possible one-third of them shall be for a term of one year, one-third for a term of two years, and one-third for a term of three years; and that at the expiration of such terms, the terms of office of their successors shall be three years; so that the term of office of one-third of such commissioners, as nearly as possible, shall expire each year. All appointments to fill vacancies shall be for the unexpired term. Not more than one-third of the members of said commission shall hold any other public office in said city or village.

Added by L. 1913, ch. 699. In effect May 24, 1913.

§ 235. Officers, expenses and assistance.

The commission shall elect annually, a chairman from its own members. It shall have the power and authority to employ experts, clerks, and a secretary, and to pay for their services and such expenses as may be necessary and proper, not exceeding, in all, the annual appropriation that may be made by said city or village for said commission. The body creating the commission shall by ordinance or resolution provide what compensation if any, each of such commissioners shall receive for his services as such commissioner. Each city and incorporated village is hereby authorized and empowered to make such appropriation as it may see fit for such expenses and compensation, such appropriations to be made by those officers or bodies in such city or village having charge of the appropriation of the public funds.

Added by L. 1913, ch. 699. In effect May 24, 1913.

§ 236. General powers.

The body creating such planning commission may, at any time, by ordinance or resolution, provide that the following matters, or any one or more of them, shall be referred for report thereon, to such commission by the board, commission, commissioner or other public officer or officers of said city or village which is the final authority thereon before final action thereon by such authority; the adoption of any map or plan of said city or incorporated village, or part thereof, including drainage and sewer or water system plans or maps, and plans or maps for any public water front, or marginal street, or public structure upon, in or in connection with such front or street, or for any dredging, filling or fixing of lines with relation to said front; any change of any such maps or plans; the location of any public structure upon, in or in connection with, or fixing lines with relation to said front; the location of any public building, bridge, statute or monument, highway, park, parkway, square, playground or recreation ground, or public open place

of said city or village. In default of any such ordinance or resolution all of said matters shall be so referred to said planning commission.

The body creating such planning commission may, at any time, by ordinance or resolution, fix the time within which such planning commission shall report upon any matter or class of matters to be referred to it, with or without the further provision that in default of report within the time so fixed, the planning commission shall forfeit the right further to suspend action, as aforesaid with regard to the particular matter upon which it has so defaulted. In default of any such ordinance or resolution, no such action shall be taken until such report is so received, and no adoption, change, fixing or location as aforesaid by said final authority, prior thereto, shall be valid. No ordinance or resolution shall deprive said planning commission of its right or relieve it of its duty, to report, at such time as it deems proper upon any matter at any time referred to it.

This section shall not be construed as intended to limit or impair the power of any art commission, park commission or commissioner, now or hereafter existing by virtue of any provision of law, to refuse consent to the acceptance by any municipality of the gift of any work of art to said municipality, without reference of the matter, by reason of its proposed location or otherwise, to said planning commission. Nor shall this section be construed as intended to limit or impair any other power of any such art commission or affect the same, except in so far as it provides for reference or report, or both, on any matter before final action thereon by said art commission.

Added by L. 1913, ch. 699. In effect May 24, 1913.

§ 237. Maps and recommendations.

Such planning commission may cause to be made a map or maps of said city or village or any portion thereof, or of any land outside the limits of said city or village so near or so related thereto that in the opinion of said

planning commission it should be so mapped. Such plans may show not only such matters as by law have been or may be referred to the planning commission, but also any and all matters and things with relation to the plan of said city or village which to said planning commission seem necessary and proper, including recommendations and changes suggested by it; and any report at any time made, may include any of the above. Such planning commission may obtain expert assistance in the making of any such maps or reports, or in the investigations necessary and proper with relation thereto.

Added by L. 1913, ch. 699. In effect May 24, 1913.

§ 238. Private streets.

The body creating such planning commission may at any time, by ordinance or resolution provide that no plan, plot or description, showing the layout of any highway or street upon private property, or of building lots in connection with or in relation to such highway or street shall, within the limits of any municipality having a planning commission, as aforesaid, be received for record in the office of the clerk of the county where such real property is situated, until a copy of said plan, plot or description has been filed with said commission and it has certified, with relation thereto, its approval thereof. Such certificate shall be recorded as a part of the record of said original instrument containing said plan, plot, or description. No such street or highway which has not received the approval of the planning commission shall be accepted by said city or village until the matter has been referred to such commission under the provision of section two hundred and thirty-six of this article. But if any such street is plotted or laid out in accordance with the map of said municipality, adopted according to law, then it shall not be necessary to file such copy, or obtain or record such certificate.

Added by L. 1913, ch. 699. In effect May 24, 1913.

§ 239. Rules.

Such commission may make rules not contrary to law, to govern its action in carrying out the provisions of this article.

Added by L. 1913, Ch. 699, in effect May 24, 1913.

§ 239a. Construction of article.

This article shall be construed as the grant of additional power and authority to cities and incorporated villages, and not as intended to limit or impair any existing power or authority of any city or village.

Any city or incorporated village in order to appoint a planning commission under this article shall recite, in the ordinance or resolution so creating the commission, the fact that it is created under this article.

Added by L. 1913, Ch. 699, in effect May 24, 1913.

ARTICLE 13.¹**Playgrounds and Neighborhood Recreation Centers.****Section 240. Application of article.**

241. Dedication or acquisition of land or buildings for playgrounds or neighborhood recreation centers.

242. Equipment and operation.

243. Recreation commission.

244. Organization of commission.

245. Expenses incurred under article.

246. Annual appropriation.

§ 240. Application of article.

This article shall apply to cities of the second and third class and villages.

Added by L. 1917, Ch. 215, in effect April 19, 1917.

§ 241. Dedication or acquisition of land or buildings for playgrounds or neighborhood recreation centers.

The board of estimate and apportionment of a city, or if there be no such board, the common council, board of aldermen or corresponding legislative body, or the board of trustees of a village, may designate and set apart for use as playgrounds in neighborhood recreation centers any land or building owned by such city or village and not dedicated or devoted to another inconsistent public use; or such city or village may, with the approval of such local authorities and in such manner as may be authorized or provided by law for the acquisition of land for public purposes in such city or village, acquire lands in such city or village for playgrounds or neighborhood recreation centers, or if there be no law authorizing such acquisition, the board of estimate and apportionment of such city, or if there be no such board, the common council, board of aldermen or corresponding legislative body, or the board of trustees of a village, may acquire land for such purposes by gift, private purchase or by condemnation, or may lease lands or buildings in such city or village for temporary use for such purpose.

Added by L. 1917, Ch. 215, in effect April 19, 1917.

¹ Article added by L. 1917, Ch. 215, in effect April 19, 1917.

§ 242. Administration, equipment and operation.

The authority to establish and maintain playgrounds and neighborhood recreation centers may be vested in the school board, park board, or other existing body or in a recreation commission as the board of estimate and apportionment, common council, board of aldermen or corresponding legislative body, or the board of trustees in a village, shall determine. The local authorities of a city or village designated to equip, operate and maintain playgrounds and neighborhood recreation centers as authorized by this article, may equip such playgrounds and recreation centers, and the buildings thereon, and may construct, maintain and operate in connection therewith public baths and swimming pools. Such local authorities may, for the purposes of carrying out the object of such playgrounds or recreation centers, employ play leaders, playground directors, supervisors, recreation secretary, superintendent or such other officers or employees as they deem proper.

Added by L. 1917, Ch. 215, in effect April 19, 1917.

§ 243. Recreation commission.

If the board of estimate and apportionment, or if there be no such board, the common council, board of aldermen, or corresponding legislative body, or the board of trustees of a village, shall determine that the power to equip, operate and maintain playgrounds and recreation centers shall be exercised by a recreation commission, they may, by resolution, establish in such city or village a recreation commission, which shall possess all the powers and be subject to all the responsibilities of local authorities under this article. Such a commission, if established, shall consist of five persons who are residents of such city or village, to be appointed by the mayor of such city or the trustees of such village to serve for terms of five years or until their successors are appointed, except that the members of such commission first appointed shall be appointed for such terms that the term of one commissioner shall expire annually thereafter. Members of such commission shall serve without pay. Vacancies in such commission occurring otherwise than by expiration of term shall be for the unexpired term and shall be filled in the same manner as original appointments.

Added by L. 1917, Ch. 215, in effect April 19, 1917.

§ 244. Organization of commission.

The members of a recreation commission established pursuant to this article shall elect from their own number a chairman and secretary and other necessary officers to serve for one year, and may employ such persons as may be needed, as authorized by this act and pursuant to law. Such a recreation commission shall have power to adopt rules of procedure for the conduct of all business within its jurisdiction.

Added by L. 1917, Ch. 215, in effect April 19, 1917.

§ 245. Expenses incurred under article.

All expenses incurred under this article coming within the annual appropriation therefor (as provided in section two hundred and forty-six of this

article) shall be a city or village charge, payable from the current funds of such city or village; but the local authorities may provide that the bonds of such city or village may be issued in the manner provided by law for the acquisition of lands or buildings for playgrounds or neighborhood recreation centers, subject, however, to the adoption of a proposition therefor at a city or village election, if the adoption of such a proposition is a prerequisite to the issuance of bonds of such city or village for public purposes generally.

Added by L. 1917, Ch. 215, in effect April 19, 1917.

§ 246. Annual appropriation.

The local authorities of a city or village having power to appropriate money therein may annually appropriate and cause to be raised by taxation in such city or village a sum sufficient to carry out the provisions of this article.

Added by L. 1917, Ch. 215, in effect April 19, 1917.

ARTICLE 14¹

Laws Repealed; When to Take Effect.

Section 300. Laws repealed.

301. When to take effect.

§ 300. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

Section 240 renumbered 300 by L. 1917, Ch. 215, in effect April 19, 1917.

§ 301. When to take effect.

This chapter shall take effect immediately.

Section 241 renumbered 301 by L. 1917, Ch. 215, in effect April 19, 1917.

SCHEDULE OF LAWS REPEALED.

Laws of	Chapter	Section	Laws of	Chapter	Section
1843....	57....	All	1862....	281....	All
1847....	294....	All	1866....	695....	All
1853....	603....	All	1869....	727....	All
1855....	334....	All	1869....	907....	All
1855....	428....	All	1870....	173....	All

¹ Art. 13 renumbered Art. 14 by L. 1917, Ch. 215, in effect April 19, 1917.

Laws of	Chapter	Section	Laws of	Chapter	Section
1870....	300....	All	1888....	62....	All
1870....	760....	All	1888....	328....	All
1870....	789....	All	1889....	402....	All
1871....	64....	All	1889....	526....	All
1871....	146....	All	1890....	160....	All
1871....	260....	All	1892....	25....	All
1871....	283....	All	1892....	301....	All
1871....	388....	All	1892....	330....	All
1871....	537....	All	1892....	456....	All
1871....	925....	All	1892....	473....	All
1872....	54....	All	1892....	518....	All
1872....	62....	All	1892....	685....	All
1872....	161....	All	1893....	122....	All
1872....	307....	All	1893....	349....	All
1872....	458....	All	1893....	466....	All
1872....	516....	All	1893....	490....	All
1872....	689....	All	1894....	667....	All
1873....	452....	All	1895....	350....	All
1873....	720....	All	1895....	351....	All
1875....	206....	All	1895....	417....	All
1875....	328....	All	1895....	615....	All
1875....	421....	All	1895....	754....	All
1875....	585....	All	1895....	792....	All
1877....	320....	All	1896....	53....	All
1877....	349....	All	1896....	576....	All
1878....	75....	All	1896....	873....	All
1878....	212....	All	1896....	910....	All
1878....	317....	All	1897....	54....	All
1879....	62....	All	1897....	444....	Part relating to
1879....	307....	All			counties and
1879....	417....	All			municipal cor-
1879....	526....	All			porations
1880....	12....	All	1898....	141....	All
1880....	21....	All	1898....	543....	All, except part
1880....	204....	All			relating to re-
1880....	336....	1-5			ligious corpora-
1880....	435....	All			tions
1880....	554....	All	1899....	242....	All
1881....	226....	All	1899....	634....	All
1881....	308....	All	1900....	342....	All
1881....	522....	All	1900....	449....	All
1881....	531....	All	1901....	333....	All
1882....	68....	All	1901....	389....	All
1882....	293....	All	1901....	659....	All
1883....	124....	All	1902....	155....	All
1883....	453....	All	1903....	515....	All
1884....	244....	All	1904....	752....	All
1885....	426....	All	1905....	705....	All
1885....	479....	All	1905....	738....	All
1886....	278....	All	1906....	49....	All
1886....	316....	All	1906....	59....	All
1886....	572....	All, except so far as it applies to the city of New York	1907....	215....	All
1886....	644....	All	1907....	237....	All
1887....	282....	All	1907....	375....	All
1887....	525....	All	1908....	187....	All
1887....	673....	All	1908....	256....	All
			1908....	259....	All
			1908....	325....	All

III. PUBLIC OFFICERS LAW.

(Chapter 47 of the Consolidated Laws.)

PUBLIC OFFICERS LAW

(L. 1909, ch. 51.)

- Article**
1. Short title; definitions (§§ 1, 2).
 2. Appointment and qualification of public officers (§§ 3-15).
 3. Creation and filling of vacancies (§§ 30-42).
 4. Powers and duties of public officers (§§ 60-70).
 5. Delivery of public books (§ 80).
 6. Construction; laws repealed; when to take effect (§§ 90-92).

ARTICLE 1.

Short Title; Definitions.

- Section**
1. Short title.
 2. Definitions.

§ 1. Short title.

This chapter shall be known as the "Public Officers Law."

§ 2. Definitions.

The term "state officer" includes every officer for whom all the electors of the state are entitled to vote, members of the legislature, justices of the supreme court, regents of the university, and every officer, appointed by one or more state officers, or by the legislature, and authorized to exercise his official functions throughout the entire state, or without limitation to any political subdivision of the state, except United States senators, members of congress, and electors for president and vice-president of the United States. The term "local officer" includes every other officer who is elected by the electors of a portion only of the state, every officer of a political subdivision or municipal corporation of the state, and every officer limited in the execution of his official functions to a portion only of the state. The office of a state officer is a state office. The office of a local officer is a local office.

ARTICLE 2.

Appointment and Qualification of Public Officers.

- Section**
3. Qualifications for holding office.
 4. Commencement of term of office.
 5. Holding over after expiration of term.
 6. Mode of choosing state officers if not otherwise provided.
 7. Appointment by the governor and senate.
 8. Commissions of officers.
 9. Deputies, their appointment, number and duties.
 10. Official oaths.

11. Official undertakings.
12. Force and effect of official undertaking.
13. Notice of neglect to file oath or undertaking.
14. Effect of consolidation on terms of office.
15. Validation of official acts performed before filing official oath or undertaking.
16. Qualifications of certain judicial officers in cities of the first class.

§ 3. Qualifications for holding office.

No person shall be capable of holding a civil office who shall not, at the time he shall be chosen thereto, be of full age, a citizen of the United States, a resident of the state, and if it be a local office, a resident of the political subdivision or municipal corporation of the state for which he shall be chosen, or within which the electors electing him reside, or within which his official functions are required to be exercised.

§ 4. Commencement of term of office.

The term of office of an elective officer, unless elected to fill a vacancy then existing, shall commence on the first day of January next after his election, if the commencement thereof be not otherwise fixed by law.

§ 5. Holding over after expiration of term.

Every officer except a judicial officer, a notary public, a commissioner of deeds and an officer whose term is fixed by the constitution, having duly entered on the duties of his office, shall, unless the office shall terminate or be abolished, hold over and continue to discharge the duties of his office, after the expiration of the term for which he shall have been chosen, until his successor shall be chosen and qualified; but after the expiration of such term, the office shall be deemed vacant for the purpose of choosing his successor. An officer so holding over for one or more entire terms, shall, for the purpose of choosing his successor, be regarded as having been newly chosen for such terms. An appointment for a term shortened by reason of a predecessor holding over, shall be for the residue of the term only.

§ 6. Mode of choosing state officers if not otherwise provided.

If the law shall not otherwise provide the mode of choosing a state officer, he shall be appointed by the governor by and with the advice and consent of the senate.

§ 7. Appointment by the governor and senate.

An appointment to an office by the governor by and with the advice and consent of the senate, shall be made by communicating to the senate, while in session, a written nomination of a person for the office, designating the residence of the nominee, and if nominated to be an officer of a political subdivision of the state, designating also such subdivision, and if nominating two or more persons to the same office for different terms, designating the term for which each is nominated. If such nomination be of a successor to a predecessor in the same office, it may be made and acted upon by the senate after the expiration of the term or occurrence of a vacancy in the office of such predecessor, or at any time during the legislative session of the calendar year in which the term of office of such predecessor shall expire or in which the office shall become vacant. If the appointment be made before the expiration

of the term of such predecessor, the term of office of the appointee shall commence upon the expiration of the term of such predecessor, or if made to fill a vacancy, upon the occurrence of such vacancy, or immediately if a vacancy already exist. If the senate shall reject such nomination, the clerk of the senate shall forthwith communicate, by writing, signed by the president and clerk of the senate, to the governor the fact of such rejection. If the senate shall confirm such nomination the appointment shall be deemed complete, and thereupon duplicate certificates of the confirmation shall be made and signed by the president and clerk of the senate, who shall cause one to be delivered to the governor and the other to the secretary of state, who shall record the same in his office in a book kept for that purpose.

§ 8. Commissions of officers.

The commission of every officer appointed by the governor, or by the governor by and with the consent of the senate, shall be signed by the governor and attested under the seal of this state, by the secretary of state, who shall make and record in his office a copy of such commission, and deliver the original to the officer appointed, by a messenger, if the governor shall so direct, and otherwise, by mail, or as the secretary of state shall deem proper. Commissions of notaries public may be signed by the secretary to the governor, and shall be sent to the county clerk of the county in which such notaries public respectively reside. Every other appointment of an officer, made by one or more state officers, shall be in writing, and signed by the officer or officers, or by a majority of the officers, or by the presiding officer of the board or body making the appointment. Every such written appointment shall be deemed the commission of the officer appointed, and if of a state officer, a duplicate or a certified copy thereof shall be recorded in the office of the secretary of state; if of a local officer it shall be sent to the clerk of the county in which the officer appointed shall then reside, who shall file the same in his office, and notify the officer appointed of his appointment.

§ 9. Deputies, their appointment, number and duties.

Every deputy, assistant, or other subordinate officer, whose appointment or election is not otherwise provided for, shall be appointed by his principal officer, board or other body, and the number thereof, if not otherwise prescribed by law, shall be limited in the discretion of the appointing power. If there is but one deputy, he shall, unless otherwise prescribed by law possess the powers and perform the duties of his principal during the absence or inability to act of his principal, or during a vacancy in his principal's office. If there be two or more deputies of the same officer, such officer may designate, in writing, the order in which the deputies shall act, in cases of his absence from the office or his inability to act, or in case of a vacancy in the office, and if he shall fail to make such designation, the deputy longest in office present shall so act. If two or more deputies present shall have held the office for the same period, the senior deputy in age shall so act. Such written designation by a state officer shall be filed in the office of the secretary of state; and by any other officer, in the office of the clerk of the county in which the principal has his office. If a vacancy in a public office shall be caused by the death of the incumbent, the deputies shall, unless otherwise provided by law, continue to hold office until the vacancy shall have been filled in accordance with law.

§ 10. Official oaths.

Every officer shall take and file the oath of office required by law before he shall be entitled to enter upon the discharge of any of his official duties. An oath of office may be administered by a judge of the court of appeals or by any officer authorized to take, within the state, the acknowledgment of the execution of a deed of real property, or by an officer in whose office the oath is required to be filed, or may be administered to any member of a body of officers, by a presiding officer or clerk thereof, who shall have taken an oath of office. The oath of office of a notary public or commissioner of deeds shall be filed in the office of the clerk of the county in which he shall reside.

The oath of office of every state officer shall be filed in the office of the secretary of state; of every officer of a municipal corporation, with the clerk thereof; and of every other officer, in the office of the clerk of the county in which he shall reside, if no place be otherwise provided by law for the filing thereof.

Amended by L. 1913, ch. 59. In effect March 6, 1913.

§ 11. Official undertakings.

Every official undertaking, when required by or in pursuance of law to be hereafter executed or filed by any officer, shall be to the effect that he will faithfully discharge the duties of his office and promptly account for and pay over all moneys or property received by him as such officer, in accordance with law, or in default thereof, that the parties executing such undertaking will pay all damages, costs and expenses resulting from such default, not exceeding a sum, if any, specified in such undertaking. The undertaking of a state officer shall be approved by the comptroller both as to its form and as to the sufficiency of the sureties and be filed in the comptroller's office. The undertaking of a municipal officer shall, if not otherwise provided by law, be approved as to its form and the sufficiency of the sureties by the chief executive officer or by the governing body of the municipality and be filed with the clerk thereof. The approval by such governing body may be by resolution, a certified copy of which shall be attached to the undertaking. The undertaking of a county officer shall, if not otherwise provided by law, be approved as to its form and the sufficiency of the sureties by the clerk of the county, and filed in his office, except that the undertakings of a county clerk shall be filed in the office of the state comptroller. The undertaking of a town officer shall, if not otherwise provided by law, be approved as to its form and the sufficiency of the sureties by the clerk of the county and filed in his office. The sum specified in an official undertaking shall be the sum for which such undertaking shall be required by or in pursuance of law to be given. If no sum, or a different sum from that required by or in pursuance of law, be specified in the undertaking, it shall be deemed to be an undertaking for the amount so required. If no sum be required by or in pursuance of law to be so specified, the officer or board authorized to approve the undertaking shall fix the sum to be specified therein. Every official undertaking shall be executed and duly acknowledged by at least two sureties, each of whom shall add thereto his affidavit that he is a freeholder or householder within the state, stating his occupation and residence and the street number of his residence and place of business if in a city, and a sum which he is worth over and above his just debts and liabilities and property exempt from execution. The aggregate of the sums so stated in such affidavits must be at least double the amount specified in the undertaking. If the surety on an official undertaking of a state or local officer, clerk or employee of the state or political subdivision thereof or of a municipal corporation by a fidelity or surety corporation, the reasonable expenses of procuring such surety, not exceeding one per centum per annum upon the sum for which such undertaking shall be required by or in pursuance of law to be given, shall be a charge against the state or political subdivision or municipal corporation respectively in and for which he is elected or appointed, except that the expense of procuring such surety as aforesaid, on an official undertaking of any officer, clerk or employee in any city department of the city of New York, or of any office, board or body of said city, or of a borough or county within said city, including officers, clerks and employees of every court within said city, shall not be a charge upon said city or upon any of the counties contained within said city, unless the comptroller of the said city, shall first have approved the necessity of requiring such official undertaking to be given, and shall have approved of or fixed the amount of any such official undertaking; but this exception shall not apply to an official undertaking specifically required by statute to be given, and the amount of which is specifically fixed by statute. The failure to execute an official undertaking in the form or by the number of sureties required by or in pursuance of law, or of a surety thereto to make an affidavit required by or in pursuance of law, or in the form so required, or the omission from such

an undertaking of the approval required by or in pursuance of law, shall not affect the liability of the sureties therein.

Amended by L. 1911, ch. 424; L. 1912, ch. 491; L. 1913, ch. 325; L. 1914, ch. 292, and L. 1915, ch. 628. In effect May 14, 1915.

All acts and parts of acts inconsistent with this act are hereby repealed (L. 1915, ch. 628, § 2.)

§ 12. Force and effect of official undertaking.

An officer of whom an official undertaking is required, shall not receive any money or property as such officer, or do any act affecting the disposition of any money or property which such officer is entitled to receive or have the custody of, before he shall have filed such undertaking; and any person having the custody or control of any such money or property shall not deliver the same to any officer of whom an undertaking is required until such undertaking shall have been given. If a public officer required to give an official undertaking, enters upon the discharge of any of his official duties before giving such undertaking, the sureties upon his undertaking subsequently given for or during his official term shall be liable for all his acts and defaults done or suffered and for all moneys and property received during such term prior to the execution of such undertaking, or if a new undertaking is given, from the time notice to give such new undertaking is served upon him. Every official undertaking shall be obligatory and in force so long as the officer shall continue to act as such and until his successor shall be appointed and duly qualified, and until the conditions of the undertaking shall have been fully performed. When an official undertaking is renewed pursuant to law the sureties upon the former undertaking shall not be liable for any official act done or moneys received after the due execution, approval and filing of the new undertaking.

§ 13. Notice of neglect to file oath or undertaking.

The officer or body making the appointment or certificate of election of a public officer shall, if the officer be required to give an official undertaking to be filed in an office other than that in which the written appointment or certificate of election is to be filed, forthwith give written notice of such appointment or election to the officer in whose office the undertaking is to be filed. If any officer shall neglect, within the time required by law, to take and file an official oath, or execute and file an official undertaking, the officer, with whom or in whose office such oath or undertaking is required to be filed, shall forthwith give notice of such neglect, if of an appointive officer, to the authority appointing such officer; if of an elective officer, to the officer, board or body authorized to fill a vacancy in such office, if any, or if none and a vacancy in the office may be filled by a special election, to the officer, board or body authorized to call or give notice of a special election to fill such vacancy; except that the notice of a failure of a justice of the peace to file his official oath, shall be given to the town clerk of the town for which the justice was elected.

§ 14. Effect of consolidation on terms of office.

If an office be continued by the consolidated laws constituting the consolidation of which this chapter is a part, the person lawfully holding such office at the time of the taking effect of such consolidated laws shall, subject to the provisions of such consolidated laws, continue therein for the term for which he was chosen, or if holding over after the expiration of his term, until his successor shall be chosen and shall have qualified.

§ 15. Validation of official acts performed before filing official oath of undertaking.

If a public officer, duly chosen, has heretofore entered, or shall hereafter enter on the performance of the duties of his office, without taking or filing

an official oath, or executing or filing an official undertaking, as required by the constitution, or by any general or special law, his acts as such officer, so performed, shall be as valid and of as full force and effect as if such oath had been duly taken and filed, and as if such undertaking had been duly executed and filed, notwithstanding the provisions of any general or special law declaring any such office vacant, or authorizing it to be declared vacant, or to be filled as in case of vacancy, or imposing any other forfeiture or penalty for omission to take or file any such oath, or to execute or file any such undertaking; but this section shall not otherwise affect any provision of any general or special law, declaring any such office vacant, or authorizing it to be declared vacant, or to be filled as in case of vacancy, or imposing any other forfeiture or penalty, by reason of the failure to take or file any such oath or to execute or file any such undertaking; and this section shall not relieve any such officer from the criminal liability imposed by section eighteen hundred twenty of the penal law, for entering on the discharge of his official duties without taking or filing such oath or executing or filing such undertaking.

§ 16. Qualifications of certain judicial officers in cities of the first class.

A person shall be eligible for appointment to the office of magistrate, judge or justice of an inferior court of criminal jurisdiction in a city of the first class, who shall at the time of such appointment be of full age, a citizen of the United States, a resident of the city, an attorney and counselor-at-law admitted to practice for the period prescribed by special law, or in lieu thereof shall have been a member of the legislature of the state for at least twelve consecutive years, notwithstanding the provisions of any general or special law inconsistent herewith.

Added by L. 1913, ch. 586. In effect May 17, 1913.

ARTICLE 3.

Creation and Filling of Vacancies.

Section 30. Creation of vacancies.

31. Resignations.
32. Removals by senate.
33. Removals by governor.
34. Evidence in proceedings for removal by governor.
35. Removals from office.
- 35a. Removal for treasonable or seditious acts or utterances.
36. Removal of town or village officer by court.
37. Notice of existence of vacancy.
38. Terms of officers chosen to fill vacancies.
39. Filling vacancies in office of officer appointed by governor and senate.
40. Vacancy occurring in office of legislative appointee, during legislative recess.
41. Vacancies filled by legislature.
42. Filling other vacancies.

§ 30. Creation of vacancies.

Every office shall be vacant upon the happening of either of the following events before the expiration of the term thereof:

1. The death of the incumbent;
2. His resignation;
3. His removal from office;
4. His ceasing to be an inhabitant of the state, or if he be a local officer, of the political subdivision, or municipal corporation of which he is required to be a resident when chosen;
5. His conviction of a felony, or a crime involving a violation of his oath of office;
6. The judgment of a court, declaring void his election or appointment, or that his office is forfeited or vacant;
7. His refusal or neglect to file his official oath or undertaking, if one is

required, before or within fifteen days after the commencement of the term of office for which he is chosen, if an elective office, or if an appointive office, within fifteen days after notice of his appointment, or within fifteen days after the commencement of such term; or to file a renewal undertaking within the time required by law, or if no time be so specified, within fifteen days after notice to him in pursuance of law, that such renewal undertaking is required. When a new office or an additional incumbent of an existing office shall be created, such office shall for the purposes of an appointment or election, be vacant from the date of its creation, until it shall be filled by election or appointment.

§ 31. Resignations.

Public officers may resign their offices as follows:

1. The governor, lieutenant-governor, secretary of state, comptroller, attorney-general, state engineer and surveyor, to the legislature;
2. All officers appointed by the governor alone, or by him with the consent of the senate, to the governor;
3. Senators and members of assembly, to the presiding officers of their respective houses;
4. Sheriffs, coroners, county clerks, district attorneys and registers of counties, to the governor;
5. Every other county officer, to the county clerk;
6. Every town officer, to the town clerk;
7. The officer of any other municipal corporation, to clerk of the corporation;
8. Every other appointive officer, where not otherwise provided by law, to the body, board or officer that appointed him, and every other elective officer, where not otherwise provided by law, to the secretary of state.

Every resignation shall be in writing addressed to the officer or body to whom it is made. If addressed to an officer, it shall take effect upon delivery to him at his place of business or when it shall be filed in his office.

If addressed to the legislature or to the presiding officer of either house thereof it shall be delivered to and filed with the secretary of state, and shall take effect when so delivered, and he shall forthwith communicate the fact of such resignation to the legislature or to such house, if in session, or if not, at its first meeting thereafter.

If addressed to any other body it shall be delivered to the presiding officer or clerk of such body, if there be one, and if not, to any member thereof, and shall take effect upon such delivery, and shall be filed with the clerk, or if there be no clerk, with the other records of such body. A delivery at the office or place of residence or business of the person to whom any such resignation may be delivered shall be a sufficient delivery thereof.

§ 32. Removals by senate.

The governor before making a recommendation to the senate for the removal of any officer may in his discretion take proofs, for the purpose of determining whether such recommendation shall be made.

The secretary of state, comptroller, treasurer, attorney-general, or the state engineer and surveyor, may be removed by the senate, on the recommendation of the governor, for misconduct or malversation in office, if two-thirds of all the members elected to the senate shall concur therein. No

such removal shall be made unless the person who is sought to be removed, shall have been served with a copy of the charges against him and have an opportunity of being heard. On the question of removal, the yeas and nays shall be entered on the journal. The governor may convene the senate in extra session for the investigation of such charges. The senate shall have power to make such rules as it may see fit for the practice before it. At the time appointed for the investigation, the senate shall proceed to hear and try the charges against such officer, and may take proofs in relation thereto.

The governor may direct the attorney-general, or may appoint any suitable person to conduct the trial of such charges before the senate.

An officer appointed by the governor by and with the advice and consent of the senate, may be removed by the senate upon the recommendation of the governor.

If the senate shall reject a recommendation of removal the clerk of the senate shall, by a writing signed by him and by the president and clerk of the senate, communicate the fact of such rejection to the governor. If the senate shall concur in such a recommendation the removal shall take effect upon the passage of the resolution of concurrence, and duplicate copies of such resolution, certified by the clerk and president of the senate, shall be executed and delivered by the clerk to the secretary of state.

§ 33. Removals by governor.

An officer appointed by the governor for a full term or to fill a vacancy, any county treasurer, any county superintendent of the poor, any register of a county, any coroner or any notary public, may be removed by the governor within the term for which such officer shall have been chosen, after giving to such officer a copy of the charges against him and an opportunity to be heard in his defense.

§ 34. Evidence in proceedings for removal by governor.

The governor may take the evidence in any proceeding for the removal by him of a public officer or may direct that the evidence be taken before a justice of the supreme court of the district, or the county judge of the county in which the officer proceeded against shall reside, or before a commissioner appointed by the governor for that purpose by an appointment in writing, filed in the office of the secretary of state. The governor may direct such judge or commissioner to report to him the evidence taken in such proceeding, or the evidence and the findings by the judge or commissioner of the material facts deemed by such judge or commissioner to be established. The commissioner or judge directed to take such evidence may require witnesses to attend before him, and shall issue subpoenas for such witnesses as may be requested by the officer proceeded against.

The governor may direct the attorney-general, or the district attorney of the county in which the officer proceeded against shall reside to conduct the examination into the truth of the charges alleged as ground for such removal. If the examination shall be before a commissioner or judge, it shall be held at such place in the county in which the officer proceeded against shall reside as the commissioner or judge shall appoint, and at least eight days after written notice of the time and place of such examination shall have been given to the officer proceeded against.

All sheriffs, coroners, constables and marshals to whom process shall be directed and delivered under this section shall execute the same without unnecessary delay.

§ 35. Removals from office.

Every removal of an officer by one or more state officers, shall be in written duplicate orders, signed by the officer, or by all or a majority of the officers, making the removal, or if made by a body or board of state officers may be evidenced by duplicate certified copies of the resolution or order of removal, signed either by all or by a majority of the officers making the removal, or by the president and clerk of such body or board. Both such duplicate orders or certified copies shall be delivered to the secretary of state, who shall record in his office one of such duplicates, and shall, if the officer removed is a state officer, deliver the other to such officer by messenger, if required by the governor, and otherwise by mail or as the secretary of state shall deem advisable, and shall, if directed by the governor, cause a copy thereof to be published in the state paper. If the officer removed be a local officer, he shall send the other of such duplicates to the county clerk of the county in which the officer removed shall have resided at the time he was chosen to the office, and such clerk shall file the same in his office, and forthwith notify the officer removed of his removal.

§ 35-a. Removal for treasonable or seditious acts or utterances.

A person holding any public office shall be removable therefrom, in the manner provided by law, for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts during his term.

Added by L. 1917, Ch. 416, in effect May 8, 1917.

§ 36. Removal of town or village officer by court.

Any town or village officer, except a justice of the peace, may be removed from office by the supreme court for any misconduct, maladministration, malfeasance or malversation in office. An application for such removal may be made by any citizen resident of such town or village and shall be made to the appellate division of the supreme court held within the judicial department embracing such town or village. Such application shall be made upon notice to such town officer of not less than eight days, and a copy of the charges upon which the application will be made must be served with such notice.

§ 37. Notice of existence of vacancy.

When a judgment shall be rendered by any court convicting an officer of a felony, or of a crime involving a violation of his oath of office, or declaring the election or appointment of any officer to be void, or that the office of any officer has been forfeited or become vacant, the clerk of such court shall give notice thereof to the governor, stating the cause of such conviction or judgment.

Whenever a public officer shall die before the expiration of his term of office, or shall cease to be a resident of the political subdivision of the state or a municipal corporation in which he is required to be a resident as a condition of continuing in the office, the county clerk of the county in which such officer shall have resided immediately prior to such death or removal, shall immediately give notice of such death or removal to the governor. If the governor is not authorized to fill any vacancy of which he shall have notice, he shall forthwith give notice of the existence of such vacancy to the officer or officers, or to the body or board of officers authorized to fill the vacancy, or if such vacancy may be filled by an election, to the officers authorized to give notice of such election.

§ 38. Terms of officers chosen to fill vacancies.

If an appointment of a person to fill a vacancy in an appointive office be made by the officer, or by the officers, body or board of officers, authorized to make appointment to the office for the full term, the person so appointed to such vacancy shall hold office for the balance of the unexpired term. The term of office of an officer appointed to fill a vacancy in an elective office, shall be until the commencement of the political year next succeeding the first annual election after the happening of the vacancy, if the office be made elective by the constitution, or at which the vacancy can be filled by election, if the office be otherwise made elective.

§ 39. Filling vacancies in office of officer appointed by governor and senate.

A vacancy which shall occur during the session of the senate, in the office of an officer appointed by the governor by and with the advice and consent of the senate, shall be filled in the same manner as an original appointment. Such a vacancy occurring or existing otherwise than by expiration of term, while the senate is not in session, shall be filled by the governor for a term which shall expire at the end of twenty days from the commencement of the next meeting of the senate.

§ 40. Vacancy occurring in office of legislative appointee, during legislative recess.

When a vacancy shall occur or exist, otherwise than by expiration of term, during the recess of the legislature, in the office of any officer appointed by the legislature, the governor shall appoint a person to fill the vacancy for a term which shall expire at the end of twenty days from the commencement of the next meeting of the legislature.

§ 41. Vacancies filled by legislature.

When a vacancy occurs or exists, other than by removal, in the office of the secretary of state, comptroller, treasurer, attorney-general, or state engineer and surveyor, or a resignation of any such office to take effect at any future day shall have been made while the legislature is in session, the two houses thereof, by joint ballot, shall appoint a person to fill such actual or prospective vacancy.

§ 42. Filling other vacancies.

If a vacancy shall occur, otherwise than by expiration of term, with no provision of law for filling the same, if the office be elective, the governor shall appoint a person to execute the duties thereof until the vacancy shall be filled by an election. But if the term of such officer shall expire with the calendar year in which the appointment shall be made, or if the office be appointive, the appointee shall hold for the residue of the term.

ARTICLE 4.**Powers and Duties of Public Officers.****Section 60. Official seals of court of appeals and state officers.**

61. Investigation by state officers.

62. Business in public offices on public holidays.

63. Leave of absence for veterans on Memorial day.

- 64. Payment of expenses of public officers.
- 65. Use of typewriters for recording public records.
- 66. Persons having custody of papers in public offices to search files and make transcripts.
- 67. Fees of public officers.
- 68. Allowance of additional fees and expenses.
- 69. Fee for administering certain official oaths prohibited.
- 70. Accounting for fees.
- 71. Vacations for employees of the state and the several civil subdivisions thereof.

§ 60. Official seals of court of appeals and state officers.

The seal of the court of appeals and of each state officer authorized to use an official seal, shall be of metal with the device of the arms of the state surrounded with the inscription, State of New York, and the name of the court or official designation of the officer. The seal of such court, the privy seal of the governor, and the seal of the secretary of state, comptroller, treasurer, state engineer and surveyor, the adjutant-general, and of each of the other state officers at the capital, required to have an official seal, shall be two and one-quarter inches in diameter, and of each other state officer authorized to have an official seal, shall be one and three-quarters inches in diameter. Such seals heretofore provided by the secretary of state shall continue to be used by such courts and officers, and when defective from wear or otherwise, shall be delivered to the secretary of state who shall cause them to be repaired and returned, or to be defaced with a suitable mark, or deposited with the ancient seals in the state library, and new seals to be provided for use instead.

§ 61. Investigations by state officers.

Every state officer, in any proceeding held before him, or in any investigation held by him for the purpose of making inquiry as to the official conduct of any subordinate officer or employee, shall have the power to issue subpoenas for and require the attendance of witnesses and the production of all books and papers relating to any matter under inquiry. All such subpoenas shall be issued under the hand and seal of the state officer holding such proceeding. If a person duly subpoenaed fails to obey such subpoena without reasonable cause, or shall, without such cause, refuse to be examined or to answer any legal or pertinent question or to produce any such book or paper called for, he may be punished as for a contempt. The testimony of witnesses in any such proceeding shall be under oath and the state officer instituting the proceeding shall have power to administer oaths. In case of state boards or commissions, any member of the same, or, when duly authorized by resolution, the secretary of such board or commission, shall have power to issue subpoenas and administer oaths for the purposes of this section.

§ 62. Business in public offices on public holidays.

Holidays and half holidays shall be considered as Sunday for all purposes relating to the transaction of business in the public offices of the state, and of each county. On all other days and half days, excepting Sundays, such offices shall be kept open for the transaction of business.

§ 63. Leave of absence for veterans on Memorial day.

It shall be the duty of the head of every public department and of every court of the state of New York, of every superintendent or foreman on the public works of said state, of the county officers of the several counties of said state, and of the head of every department, bureau and office in the government of the various cities and villages in this state, to give leave of absence with pay for the twenty-four hours of the thirtieth day of May, or such other day as may, according to law, be observed as Memorial day, to every person in the service of the state, the county, the city or village, as the case may be, who served in the army or the navy of the United States in the war of the rebellion, or who served in the regular or volunteer army or the navy or the marine corps of the United States during the war with Spain or during the insurrection in the Philippine islands, or who has served in the regular army or navy or marine corps of the United States, and who was honorably discharged from such service. A refusal to give such leave of absence to one entitled thereto shall be neglect of duty.

Amended L. 1910, ch. 335. In effect May 19, 1910.

§ 64. Payment of expenses of public officers.

Every public officer who is not allowed any compensation for his services shall be paid his actual expenses necessarily incurred in the discharge of his official duties.

§ 65. Use of typewriters for recording public records.

The public officers of the state or of any municipal corporation therein having charge of the recording of public records, papers, documents or matters required by law to be recorded in their respective offices are hereby authorized and empowered to use typewriting machines for recording the same.

§ 66. Persons having custody of papers in public offices to search files and make transcripts.

A person, having the custody of the records or other papers in a public office, within the state, must, upon request, and upon payment of, or offer to pay, the fees allowed by law, or, if no fees are expressly allowed by law, fees at the rate allowed to a county clerk for a similar service, diligently search the files, papers, records, and dockets in his office; and either make one or more transcripts therefrom, and certify to the correctness thereof, and to the search, or certify that a document or paper, of which the custody legally belongs to him, can not be found.

§ 67. Fees of public officers.

1. Each public officer upon whom a duty is expressly imposed by law, must execute the same without fee or reward, except where a fee or other compensation therefor is expressly allowed by law.

2. An officer or other person, to whom a fee or other compensation is allowed by law, for any service, shall not charge or receive a greater fee or reward, for that service, than is so allowed.

3. An officer, or other person, shall not demand or receive any fee or compensation, allowed to him by law for any service, unless the service was actually rendered by him; except that an officer may demand in advance his fee, where he is, by law, expressly directed or permitted to require payment thereof, before rendering the service.

An officer or other person, who violates either of the provisions contained in this section, is liable, in addition to the punishment prescribed by law for the criminal offense, to an action in behalf of the person aggrieved, in which the plaintiff is entitled to treble damages.

§ 68. Allowance of additional fees and expenses.

Where an officer or other person is required, in the course of a duty imposed upon him by law, to take an oath, to acknowledge an instrument, to cause an instrument to be filed or recorded, or to transmit a paper to another officer, he is entitled, in addition to the fees, or other compensation for the service, prescribed by law, to the fees necessarily paid by him, to the officer who administered the oath, or took the acknowledgment, or filed or recorded the instrument; and to the expense of transmitting the paper, including postage, where the transmission is lawfully made through the post-office.

§ 69. Fee for administering certain official oaths prohibited.

An officer is not entitled to a fee, for administering the oath of office to a member of the legislature, to any military officer, to an inspector of election, clerk of the poll, or any town officer; or to more than ten cents, for administering an official oath to any other officer.

§ 70. Accounting for fees.

Where a public officer is required, by law, to keep an account of, or to pay over, the fees or other moneys, received by him for official services, he must include therein all sums, received by him, to which he was entitled, by reason of any act, performed by him in his official capacity; whether the act did or did not pertain to his office, or the business thereof.

§ 71. Vacations for employees of the state and the several civil subdivisions thereof.

The executive officers of every public department, bureau, commission, or board of the state and of each county, city or other civil division thereof are authorized and empowered to grant to every employee under their supervision, who shall have been in such employ for at least one year, a vacation of not less than two weeks in each year, and for such further period of time as in the opinion and judgment of the executive officers, the duties, position, length of service and other circumstances may warrant, at such time as the executive officers may fix and during such vacation the said employee shall be allowed the same compensation as if actually employed.

Added by L. 1910, Ch. 680. In effect June 25, 1910.

ARTICLE 5.

Delivery of Public Books.

Section 80. Delivery of books and papers.

§ 80. Delivery of books and papers.

A public officer may demand from any person in whose possession they may be, a delivery to such officer of the books and papers belonging to or appertaining to such office. If such demand is refused, such officer may make complaint thereof to any justice of the supreme court of the district, or to the

county judge of the county in which the person refusing resides. If such justice or judge be satisfied that such books or papers are withheld, he shall grant an order directing the person refusing to show cause before him at a time specified therein, why he should not deliver the same. At such time, or at any time to which the matter may be adjourned, on proof of the due service of the order, such justice or judge shall proceed to inquire into the circumstances. If the person charged with withholding such books or papers makes affidavit before such justice or judge that he has delivered to the officer all books and papers in his custody which, within his knowledge, or to his belief belong or appertain thereto, such proceedings before such justice or judge shall cease, and such person be discharged. If the person complained against shall not make such oath, and it appears that any such books or papers are withheld by him, such justice or judge shall commit him to the county jail until he delivers such books and papers, or is otherwise discharged according to law. On such commitment, such justice or judge, if required by the complainant, shall also issue his warrant directed to any sheriff or constable, commanding him to search, in the daytime, the places designated therein, for such books and papers, and to bring them before such justice or judge. If any such books and papers are brought before him by virtue of such warrant, he shall determine whether they appertain to such office, and if so shall cause them to be delivered to the complainant.

ARTICLE 6.

Construction; Laws Repealed; When to Take Effect.

Section 90. Application of chapter.

91. Laws repealed.

92. When to take effect.

§ 90. Application of chapter.

This chapter applies to civil officers only.

§ 91. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 92. When to take effect.

This chapter shall take effect immediately.

IV. TRANSPORTATION CORPORATION LAW— MISCELLANEOUS PROVISIONS.

(Chapter 63 of the Consolidated Laws.)

§ 46. Construction of pipe lines through villages and cities.

No pipe line shall be constructed into or through any incorporated village or city in this state, unless authorized by a resolution prescribing the route, manner of construction and terms upon which granted, adopted at a regular meeting of the board of trustees of the village or the common council of the city by a two-thirds vote of such board or council, but such resolution shall not affect any private right. No pavement shall be removed in any city under the provisions of this article, unless done under the direction of the common council, nor until such corporation shall give a bond in such sum as the common council may require for the replacing of any pavements which shall have been removed. In case any pavement shall have been removed and not properly relaid, the common council may bring suit in any court of record, for the cost of relaying such pavement against any such corporation. No gas-houses shall be erected in any city under the provisions of this article, for supplying gas to the inhabitants, unless consent is first given by the corporate authorities of the city.

ARTICLE 7.

Gas and Electric Light Corporations.

Section 60. Incorporation.

61. Powers.

62. Gas and electric light must be supplied on application.

63. Deposit of money may be required.

64. Buildings may be entered for the examination of meters, pipes, fittings, wires and works.

65. Refusal or neglect to pay rent.

66. No rent for meters to be charged.

§ 60. Incorporation.

Three or more persons may become a corporation for manufacturing and supplying gas for lighting the streets and public and private buildings of cities, villages and towns in this state, or for manufacturing and using electricity for producing light, heat or power, and in lighting streets, avenues, public parks and places, and public and private buildings of cities, villages and towns within this state, or for two or more of such purposes, by making, signing, acknowledging and filing a certificate stating the name of the corporation, its objects, the amount of its capital stock, the term of its existence not to exceed fifty years, the number of shares of which the stock shall consist, the number of directors not less than three nor more than thirteen, the names and places of residence of the directors for the first year, and the names of the towns, villages, cities and counties in which the operations of the corporation are to be carried on, and thereupon the persons who shall have signed the same, their associates and successors shall be a corporation by the name stated in the certificate.

§ 61. Powers.

Every such corporation shall have the following additional powers:

1. If incorporated for the purpose of supplying gas for light, to manufacture gas, and to acquire by purchase or otherwise natural gas and to sell and furnish such quantities of gas as may be required in each city, town and village named in its certificate of incorporation, for lighting the streets, and public or private buildings or for other purposes; and to lay conductors for conducting gas through the streets, lanes, alleys, squares and highways, in each such city, village and town, with the consent of the municipal authorities thereof, and under such reasonable regulations as they may prescribe; and such municipal authorities shall have power to exempt any such corporation from taxation on its personal property for a period not exceeding three years from the organization of the corporation. Any corporation authorized under any general or special law of this state to manufacture and supply gas shall have the like powers and privileges.

2. If incorporated for the purpose of using electricity for light, heat or power, to carry on the business of lighting by electricity or using it for heat or power in cities, towns and villages within this state, and the streets, avenues, public parks and places thereof, and public and private buildings therein; and for the purposes of such business to generate and supply electricity; and to make, sell or lease all machines, instruments, apparatus and other equipments therefor, and to lay, erect and construct suitable wires or other conductors, with the necessary poles, pipes or other fixtures in, on, over and under the streets, avenues, public parks and places of such cities, towns or villages, for conducting and distributing electricity, with the consent of the municipal authorities thereof, and in such manner and under such reasonable regulations, as they may prescribe.

Any electric light company in any town or village in this state having a contract with any town or incorporated village for the lighting of streets, parks, squares or public buildings in any town or village, shall have the right and is hereby vested with the power and authority to acquire such real estate as may be necessary for the purposes of its incorporation, or acquire the right of way through any property in the same manner as is now vested by law in water-works companies. Such real estate or right of way shall be acquired in the manner and form prescribed by the general condemnation law of this state.

3. Subject to the permission and approval of the proper public service commission, any two or more corporations organized under this article or under any general or special law of the state for the purpose of carrying on any business which a corporation organized under this article might carry on, may consolidate such corporations into a single corporation, and any such corporation may with the like permission and approval be merged with any other such corporation, upon complying with the provisions of the business corporations law relating to the consolidation of business corporations, and the stock corporation law relating to the merger of stock corporations.

4. Any corporation organized under this article or under any general or special law of this state for the purpose of using electricity for light, heat or power in cities, other than of the first class, towns or villages within this state, may have and acquire the following additional powers, to wit: the power of supplying steam to consumers from a central station or sta-

tions through pipes laid in the public streets of the cities, towns and villages within this state, and for that purpose, to lay, construct and maintain suitable pipes and conduits or other fixtures in, on and under the streets, avenues, public parks and places of such cities, towns or villages, with the consent of the municipal authorities thereof, and under such reasonable regulations as they may prescribe. For the purpose of acquiring the powers above specified any such corporation may make, sign, acknowledge and file in the same manner as an original or amended certificate of incorporation, a certificate stating that such corporation desires and intends to exercise the powers hereinabove specified. Upon the making, signing, acknowledging and filing such certificate, such corporation shall have and acquire for the purposes specified in such certificate all the rights, privileges and powers, and be subject to all the restrictions of district steam corporations, specified in sections twelve, thirteen and fourteen of the business corporations law.

§ 62. Gas and electric light must be supplied on application.

Upon the application, in writing, of the owner or occupant of any building or premises within one hundred feet of any main laid down by any gas light corporation, or the wires of any electric light corporation, and payment by him of all money due from him to the corporation, the corporation shall supply gas or electric light as may be required for lighting such building or premises, notwithstanding there be rent or compensation in arrears for gas or electric light supplied, or for meter, wire, pipe or fittings, furnished to a former occupant thereof, unless such owner or occupant shall have undertaken or agreed with the former occupant to pay or to exonerate him from the payment of such arrears, and shall refuse or neglect to pay the same; and if for the space of ten days after such application, and the deposit of a reasonable sum as provided in the next section, if required, the corporation shall refuse or neglect to supply gas or electric light as required, such corporation shall forfeit and pay to the applicant the sum of ten dollars, and the further sum of five dollars for every day thereafter during which such refusal or neglect shall continue; provided that no such corporation shall be required to lay service pipes or wires for the purpose of supplying gas or electric light to any applicant where the ground in which such pipe or wire is required to be laid shall be frozen, or shall otherwise present serious obstacles to laying the same; nor unless the applicant, if required shall deposit in advance with the corporation a sum of money sufficient to pay the cost of his portion of the pipe or wire required to be laid, and the expense of laying such portion.

§ 63. Deposit of money may be required.

Every gas light and electric light corporation may require every person to whom such corporation shall supply gas or electric light for lighting any building, room or premises to deposit with such corporation a reasonable sum of money according to the number and size of lights used or required, or proposed to be used, for two calendar months, by such person, and the quantity of gas and electric light necessary to supply the same, as security for the payment of the gas and electric light rent or compensation for gas consumed, or rent of pipe or wire and fixtures, to become due to the corporation, but every corporation shall allow and pay to every such depositor legal interest on the sum deposited for the time his deposit shall remain with the corporation.

§ 64. Buildings may be entered for the examination of meters, pipes, fittings, wires and works.

Any officer or other agent of any gas light or electric light corporation, for that purpose duly appointed and authorized by the corporation, may, at all reasonable times, upon exhibiting a written authority, signed by the president and secretary of the corporation, enter any dwelling, store, building, room or place lighted with gas or electric light supplied by such corporation, for the purpose of inspecting and examining the meters, pipes, fittings, wires and works for supplying or regulating the supply of gas or electric light and of ascertaining the quantity of gas or electric light consumed or supplied, and if any person shall, at any time, directly or indirectly, prevent or hinder any such officer or agent from so entering any such premises, or from making such inspection or examination at any reasonable time, he shall, for every such offense, forfeit to the corporation twenty-five dollars.

§ 65. Refusal or neglect to pay rent.

If any person supplied with gas or electric light by any such corporation shall neglect or refuse to pay the rent or remuneration due for the same or for the wires, pipes or fittings let by the corporation, for supplying or using such gas or electric light or for ascertaining the quantity consumed or used as required by his contract with the corporation, or shall refuse or neglect, after being required so to do, to make the deposit required, such corporation may prevent the gas or electric light from entering the premises of such person; and their officers, agents or workmen may enter into or upon any such premises between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, and separate and carry away any meter, pipe, fittings, wires or other property of the corporation, and may disconnect any meter, pipe, fittings, wires or other works whether the property of the corporation or not, from the mains, pipes or wires of the corporation.

§ 66. No rent for meters to be charged.

No gas light corporation in this state shall charge or collect rent on its gas meters, either in a direct or indirect manner, and any person, party or corporation violating this provision shall be liable to a penalty of fifty dollars for each offense, to be sued for and recovered in the corporate name of the city or village where the violation occurs, in any court having jurisdiction, and when collected to be paid into the treasury of such city or village and to constitute a part of the contingent or general fund thereof.

ARTICLE 8.

Water-Works Corporations.

Section 80. Incorporation.

81. Must supply water; contracts with municipalities.

82. Powers.

83. Survey and map.

84. Condemnation of real property.

85. Corporation may contract with other cities, towns or villages; amended certificate.

§ 80. Incorporation.

Seven or more persons may become a corporation for the purpose of supplying water to any of the cities, towns or villages and the inhabitants thereof in this state, by executing, acknowledging and filing a certificate stating the name of the corporation, the amount of its capital stock, the number of shares into which it is to be divided, the location of its principal office, the number of its directors, not less than seven, the names and places of residence of the directors for the first year, the names of the cities, towns and villages which it is proposed to supply with water; that the permit of the authorities of such cities, towns and villages herein required has been granted; the post-office address of each subscriber, and the number of shares he agrees to take in such corporation, the aggregate of which shall be at least one-tenth of the capital stock, and ten per centum of which shall be paid in cash to the directors. At the time of filing there shall be annexed to the certificate and as a part thereof, a permit, signed and acknowledged by a majority of the board of trustees of the village, in case an incorporated village is to be supplied with water, and in case a town, or any part thereof, not within an incorporated village, is to be so supplied, by the supervisor, justice of the peace, town clerk and highway commissioners thereof or a majority of them, and in case a city is to be supplied with water, by the board of water commissioners of said city, or by such other board or set of officials as perform the duties of water commissioners and have charge of the water supply for said city, authorizing the formation of such corporation for the purpose of supplying such city, village or town with water, and an affidavit of at least three of the directors that the amount of capital stock herein required has been subscribed and paid in cash.

§ 81. Must supply water; contracts with municipalities.

Every such corporation shall supply the authorities or any of the inhabitants of any city, town or village through which the conduits or mains of such corporation may pass, or wherein such corporations may have organized, with pure and wholesome water at reasonable rates and cost, and the board of trustees of any incorporated village and the water commissioners or other board or officials performing the duties of water commissioners, and having charge of the water supplies of any city of this state, shall have the power to contract in the name and behalf of the municipal corporation of which they are officers, for the term of one year or more for the delivery by such company to the village or city, of water through hydrants or otherwise, for the extinguishment of fires and for sanitary and other public purposes; and the amount of such contract agreed to be paid shall be annually raised as a part of the expenses of such village or city, and shall be levied, assessed and collected in the same manner as other expenses of the village or city are raised, and when collected shall be kept separate from other funds of the village or city, and be paid over to such corporation by such trustees or city officials, according to the terms and conditions of any such contract; and any such contract entered into by the board of trustees of any village, or by water commissioners or other board performing the duties of water commissioners and having charge of the water supply of any city, shall be valid and binding upon such village or city, but no such contract shall be made for a longer period than ten years nor for a sum exceeding in the aggregate, two and one-half mills for every dollar of the taxable property of such

village or city, per annum, except upon a petition of a majority of the taxable inhabitants of any such village or city, or portion thereof, which it is proposed to supply with pure and wholesome water, unless a resolution authorizing the same has been submitted to a vote of the electors of the village or city, in the manner provided by the village law or city charter, and approved by a majority of the voters entitled to vote and voting on such question at any annual election or special election duly called; and any board of trustees or board of water commissioners or other city officials, when so authorized, may make such contract for a term not exceeding thirty years, and the amount of such contract shall be paid in semi-annual instalments. The town board of any town may establish a water supply district in such town outside of a city or incorporated village therein, by filing a certificate describing the bounds thereof, in the office of the town clerk; and may contract in the name of the town for the delivery, by a corporation, subject to the provisions of this article, of a supply of water for fire, sanitary or other public purposes, to such districts, and the whole town shall be bound by such contract, but the rental or expense thereof shall annually, in the same manner as other expenses of the town are raised, be assessed, levied upon and collected only from the taxable property within such water supply district. Such money, when collected, shall be kept as a separate fund and be paid over to such corporation by the supervisor of the town, according to the terms and conditions of any such contract. No such contract shall be made for a longer period than five years, nor for an annual expense exceeding three mills upon each dollar of the taxable property within such water supply district, provided, however, that where the population of the water supply district does not exceed one thousand inhabitants such contract may be made for a period not longer than ten years.

§ 82. Powers.

Every such corporation shall have the following additional powers:

1. To lay and maintain its pipes and hydrants for delivering and distributing water in any street, highway or public place of any city, town or village in which it has obtained the permit required by section eighty of this article.
2. To lay its water pipes in any streets or avenues or public places of an adjoining city, town or village, to the city, town or village where such permit has been obtained, provided that such right in an adjoining city or village having a population of more than twelve thousand inhabitants shall be subject to the permission of the local authorities thereof and upon such conditions as they may prescribe.
3. To cause such examinations and surveys for its proposed water-works to be made as may be necessary to determine the proper location thereof, and for such purpose by its officers, agents or servants to enter upon any lands or waters in the city, town or village where organized, or in any adjoining city, town or village for the purpose of making such examinations or surveys, subject to liability for all damages done.

§ 83. Survey and map.

Before entering upon, taking or using any land, for the purposes of its incorporation such corporation shall cause a survey and map to be made of the lands intended to be taken or entered upon, by and on which the

land of each owner or occupant shall be designated, which map shall be signed by the president and secretary, and filed in the office of the county clerk of the county in which such lands are situated.

§ 84. Condemnation of real property.

Any corporation organized under this article, shall have the right to acquire real estate, or any interest therein necessary for the purposes of its incorporation, and the right to lay, relay, repair and maintain conduits and water pipes with connections and fixtures in, through or over the lands of others, the right to intercept and divert the flow of waters from the lands of riparian owners, and from persons owning or interested in any waters, and the right to prevent the flow of drainage of noxious or impure matters from the lands of others into its reservoirs or sources of supply. If any such corporation, which has made a contract with any city, town or village or with any of the inhabitants thereof for the supply of pure and wholesome water as authorized by section eighty-one of this article, shall be unable to agree upon the terms of purchase of any such property or rights, it may acquire the same by condemnation. But no such corporation shall have power to take or use water from any of the canals of this state, or any canal reservoirs as feeders, or any streams which have been taken by the state for the purpose of supplying the canals with water.

§ 85. Corporation may contract with other cities, towns or villages; amended certificate.

When any such corporation has entered into a contract with the authorities of any city, town or village not mentioned in its certificate of incorporation, but situated in the same county as the city, towns or villages mentioned therein or an adjoining county, to supply it with pure and wholesome water, it may file an amended certificate, stating the name of such other city, town or village to be so supplied with water, and it may thereupon supply any such city, town or village with water in the same manner and with the same rights and subject to the same requirements as if it had been named in the original certificate of incorporation.

ARTICLE 9.

Telegraph and Telephone Corporations.

Section 100. Incorporation.

- 101. Extension of lines.
- 102. Construction of lines.
- 103. Transmission of dispatches.
- 104. Consolidation of corporations.
- 105. Special policemen.
- 106. Application of article.

§ 100. Incorporation.

Seven or more persons may become a corporation for the purpose of constructing, owning, using and maintaining a line or lines of electric telegraph or telephone, wholly within or partly beyond the limits of this state, or for the purpose of owning any interest in any such line or lines, or any grants

therefor by executing, acknowledging and filing a certificate, stating the name of the corporation; its general route and the points to be connected; its capital stock; the number of shares into which it is to be divided; the term of its existence; the number of its directors not less than seven; the names and residences of the directors for the first year, and the post-office addresses of the subscribers and the number of shares which each agrees to take in such corporation.

§ 101. Extension of lines.

Any such corporation may construct, own, use and maintain any line of electric telegraph or telephone, not described in its original certificate of incorporation, whether wholly within or wholly or partly beyond the limits of this state, and may join with any other corporation in constructing, leasing, owning, using and maintaining such line, or hold or own any interest therein, or become lessees thereof, upon filing in the same manner as the original certificate is required to be filed an amended certificate, executed and acknowledged by at least two-thirds of the directors of such corporation, describing the general route of such line or lines, and designating the extreme points connected thereby, and upon procuring the written consent of the persons owning at least two-thirds of the capital stock of such corporation, and such amended certificate shall not be filed until there is indorsed thereon or annexed thereto an affidavit made by at least three of the directors of the corporation that such consent has been obtained, which affidavit shall be filed with and be a part of such certificate.

§ 102. Construction of lines.

Such corporation may erect, construct and maintain the necessary fixtures for its lines upon, over or under any of the public roads, streets and highways; and through, across or under any of the waters within the limits of this state, and upon, through or over any other lands, subject to the right of the owners thereof to full compensation for the same. If any such corporation can not agree with such owner or owners upon the compensation to be paid therefor, such compensation shall be ascertained in the manner provided in the condemnation law. Any company or companies organized and incorporated under the laws of this state for the purpose of owning, constructing, using and maintaining a line or lines of electric telegraph within this state or partly within and partly beyond the limits of this state, are hereby authorized, from time to time, to construct and lay lines of electrical conductors under ground in any city, village or town within the limits of this state, subject to all the provisions of law in reference to such companies not inconsistent with this section; provided that such company shall, before laying any such line in any city, village or town of this state, first obtain from the common council of cities, the trustees of villages, or the commissioners of highways of towns, permission to use the streets within such city, village or town for the purposes herein set forth. Nothing herein contained shall be so construed as in any way to limit, alter, or affect the provisions or powers relating or granted to telegraph companies heretofore created by special act of the legislature of this state, except in so far as to confer on any such company the right to lay electrical conductors under ground.

§ 103. Transmission of dispatches.

Every such corporation shall receive dispatches from and for other telegraph or telephone lines or corporations, and from and for any individual, and on payment of the usual charges by individuals for transmitting dispatches as established by the rules and regulations of such corporation, transmit the same with impartiality and good faith and in the order in which they are received, and if it neglects or refuses so to do, it shall pay one hundred dollars for every such refusal or neglect to the person or persons sending or desiring to send any such dispatch and entitled to have the same so transmitted, but arrangements may be made with the proprietors or publishers of newspapers for the transmission for publication of intelligence of general and public interest out of its regular order.

§ 104. Consolidation of corporations.

Any corporation organized under this article may lease, sell or convey its property, rights, privileges and franchises, or any interest therein, or any part thereof to any telegraph or telephone corporation organized under or created by the laws of this or any other state, and may acquire by purchase, lease or conveyance the property rights, privileges and franchises, or any interest therein or part thereof of any such corporation, and may make payments therefor in its own stock, money or property, or receive payment therefor in the stock, money or property of the corporation to which the same may be so sold, leased or conveyed, but no such lease, sale, purchase or conveyance shall be valid until it shall have been ratified and approved by a three-fifths vote of its board of directors or trustees, and by the vote or written consent of stockholders owning at least three-fifths of the capital stock given at a meeting of all the stockholders duly called for that purpose.

§ 105. Special policemen.

The police department or board of police of any city may, in addition to the police force now authorized by law, appoint a number of persons, not exceeding two hundred, who may be designated by any corporation operating a system of signaling by telegraph to a central office for police assistance, to act as special patrolmen in connection with such telegraphic system. And the persons so appointed shall, in and about such service, have all the powers possessed by the members of the regular force, except as they may be limited by and subject to the supervision and control of the police department or board of police of such city. No person shall be appointed such special policeman who does not possess the qualifications required by such police department or board of police for such special service; and persons so appointed shall be subject, in case of emergency, to do duty as part of the regular police force of the city. The police department or board of police shall have power to revoke any such appointment at any time, and every person appointed shall wear a badge and uniform, to be furnished by such corporation and approved by the police department or board of police; such uniform shall be designated at the time of the first appointment and shall be the permanent uniform to be worn by such special police, and the pay of such special patrolmen and all expenses connected with their service shall be wholly paid by such corporation, and no expense or liability shall at any

time be incurred or paid by the police department or board of police of any city, for or by reason of the services of such person so appointed.

§ 106. Application of article.

The provisions of this article shall apply to corporations for the generation and distribution of music electrically; and such corporations shall possess the powers and be subject to all the duties granted to or imposed upon telegraph and telephone companies thereby except that such corporations shall not have or exercise the right of condemnation.

V. TOWN LAW — MISCELLANEOUS PROVISIONS.

(Chapter 62 of the Consolidated Laws.)

§ 85. Compensation of town officers.

Town officers shall be entitled to compensation at the following rates for each day actually and necessarily devoted by them to the service of the town in the duties of their respective office, when no fee is allowed by law for the service, as follows:

a. The supervisor, except when attending the board of supervisors, town clerk, justices of the peace and overseers of the poor, each, two dollars per day, and assessors three dollars per day, unless a different rate be fixed by or pursuant to this section;

b. The board of supervisors of any county may, by resolution, fix the compensation of any of such officers in the towns of such county at the rate of more than two but not more than four dollars per day, and assessors at the rate of more than three but not more than five dollars per day, notwithstanding any provision of this section fixing or authorizing the fixing of a different per diem rate;

c. The town board of any town may, by resolution, fix the compensation of the assessors in such town at more than three but not more than five dollars per day each.

Subds. a, b, c, amended by L. 1917, Ch. 572, in effect May 19, 1917.

d. Assessors in the county of Monroe shall receive compensation at the rate of not less than three dollars nor more than five dollars per day each to be fixed by the town board.

e. Assessors in the county of Nassau shall receive compensation at the rate of three dollars per day each.

f. The town board of any town in which the assessed valuation of real estate is over twenty million dollars may, by resolution, determine that the assessors thereof shall each receive an annual salary of not more than one thousand dollars in lieu of per diem compensation.

g. The town board of any town in the county of Nassau having a population, as appears by the last federal census, of seventeen thousand inhabitants or more, may fix the annual compensation for assessor of such town, at not more than twelve hundred dollars each, and provide for the payment of such compensation in quarterly installments.

h. The town board of any town in which the assessed valuation of taxable real and personal property is ten million dollars or more may determine by resolution that the overseers of the poor in such town shall receive an annual salary, to be fixed by such resolution, not exceeding one thousand dollars, in lieu of the per diem compensation provided by this section.

i. The town board of any town in a county adjoining a city of the first class may by resolution fix the compensation of the persons appointed and serving as inspectors of election at a sum not exceeding twelve dollars for the hours fixed by law for each day of registration, and of revision of registration for a special election, and six dollars for the count and return of the votes, said claim to be allowed and paid in the same manner as other town charges are allowed and paid. Ballot clerks shall receive the same compensation for

their attendance at an election as inspectors of election for the election and be paid in like manner. Poll clerks shall receive the same compensation for their attendance at an election and canvass of the votes as inspectors of election and be paid in like manner.

j. The town board of any town in a county having a population of two hundred thousand or less, according to the last federal or state census or enumeration, adjoining a city of the first class having a population of one million and upwards may, by a resolution, fix the compensation of the town clerk at not more than thirty-five hundred dollars per annum. The town clerks in such towns may, with the approval of the town board, appoint a deputy town clerk at a salary to be fixed by the town board not exceeding the sum of fifteen hundred dollars per annum. Such town clerk and deputy town clerk shall receive and collect the fees allowed by law and shall keep an accurate record of the same. At the end of each month, he shall make a verified report of such fees giving the date and amount of each fee and the person from whom received, which he shall file with the supervisor of the town, and pay over to such supervisor all the moneys so received during such month, to be paid by the supervisor into the town fund of such town.

Subd. added by L. 1916, ch. 554, in effect May 15, 1916.

k. The constables hereafter elected in any town of a county containing two hundred thousand inhabitants or less, according to the last federal census or state enumeration, adjoining a city of the first class containing a population of over one million, shall receive annual salaries to be fixed by the town board at not exceeding fifteen hundred dollars each. The salaries of the constables in any such town shall be uniform. Such salaries shall be determined before the first biennial town meeting hereafter held, but may be diminished or increased, within such limitation, by the town board from time to time, with respect to constables to be thereafter elected. The town board may provide for the payment of such salary in either monthly or quarterly installments. The constables hereafter elected in any such town shall not receive to their own use any other compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties. The accounts for such expenses shall be audited and paid by the town board monthly. All fees or charges payable by law to constables of any such town for any services in their official capacity shall be collected by such constables, but shall belong to the town, and the amount collected shall be paid over, on or before the fifth day of each month, to the supervisor.

Subd. added by L. 1917, ch. 44, in effect March 9, 1917.

l. The town board of any town in a county containing a town having a population of sixty thousand or over according to the last federal census or state enumeration, adjoining a city of the first class containing a population of over one million, may by resolution fix the compensation of all town officers except the compensation of the members of such town board, notwithstanding the provisions of any other subdivision of this section. The compensation of the members of any such town board shall continue as now provided by law. Any town board adopting such resolution shall determine such compensation before the first biennial town meeting hereafter held, and such compensation may be diminished or increased by such town board from time to time, with respect to officers to be thereafter elected or appointed, except that all town officers of the same class or title shall receive the same compensation. Such town board may provide for the payment of such compensation in either monthly or quarterly installments. (Paragraph added by L. 1918, ch. 123, in effect April 3, 1918.)

1. The town board of any town in a county having a population of more than three hundred thousand according to the last federal or state census, or enumeration, adjoining a city of the first class having a population of one million and upwards, may determine by resolution that the overseer of the poor, or overseers of the poor, elected or appointed, shall receive an annual salary to be fixed by such resolution; provided, however, such annual salary of such overseer of the poor, or of each of said overseers of the poor, shall not exceed one thousand dollars in such a town having a population of less than seventy-five hundred, and shall not exceed one thousand five hundred dollars

in such a town having a population of seventy-five hundred or over; except, however, in such a town having a population of twenty thousand or over and an assessed valuation of forty million or over and having but one such overseer of the poor such annual salary may be fixed at not to exceed three thousand dollars, and further that when such a salary has been so fixed as herein provided, it shall be in lieu of any other or different compensation or method of compensation notwithstanding any general or special law. (Paragraph added by L. 1918, ch. 359, in effect April 30, 1918.)

l. Town clerks of any town in Erie county shall receive compensation at the rate of three dollars per day each. (Paragraph added by L. 1918, ch. 387, in effect April 30, 1918.)

l. The town board of any town having a population of fifteen thousand or more, according to the last federal or state census or enumeration, and an assessed valuation of fifteen million dollars or more, may, by resolution, fix the compensation of the town clerk at an annual salary, to be prescribed by the resolution and payable in stated installments. (Paragraph added by L. 1918, ch. 360, in effect April 30, 1918.)

n. The town board of a town having a population of twenty thousand or over, and an assessed valuation of forty millions or over, in a county having a population of more than three hundred thousand according to the last federal or state census, or enumeration, adjoining a city of the first class having a population of one million and upwards, may determine by resolution that the town superintendent of highways shall receive on annual salary to be fixed by such resolution; provided, however, such annual salary of the said town superintendent of highways shall not exceed three thousand dollars. (Paragraph added by L. 1918, ch. 117, in effect April 3, 1918.)

The compensation of a town officer now fixed pursuant to this section shall continue as so fixed until changed pursuant to this section as amended. If the compensation of a town officer be fixed by or pursuant to statute on a per diem basis, he shall not be entitled to receive more than one day's compensation on account of services performed on the same calendar day.

Subd. amended by L. 1915, chs. 73 and 452, in effect April 28, 1915.

2. If a different rate is not otherwise established as herein provided, each inspector of election, ballot clerk and poll clerk is entitled to three dollars per day; but the town board may establish in its town a higher rate, not exceeding six dollars per day, but such election officers shall receive compensation for one day only for all services rendered on the day of election and in canvassing the votes thereafter, and in completing the returns.

Subd. amended by L. 1916, ch. 93, in effect March 30, 1916.

3. The supervisor of each town shall be allowed and paid, in the same manner as other town charges are allowed and paid, a fee of one per centum on all moneys paid out by him as such supervisor, including school moneys disbursed by him as provided in the education law, moneys paid out by him for damages arising from dogs killing or injuring sheep as provided in article seven of the county law, moneys in his hands paid out by him for the relief of the poor, and all other town moneys paid out by him for defraying town charges, except moneys expended under the highway law. But no such fees shall be allowed or paid upon moneys paid over by him to his successor in office. Such fees shall be in full compensation for all services rendered by him in respect to moneys received and paid out by him as such supervisor as provided by law except the compensation provided in section one hundred and ten of the highway law.

Amended by L. 1909, ch. 491, in effect May 25, 1909.

§ 86. Compensation of town clerks in certain towns.

The town clerk of each town containing a population of twenty thousand or upwards, except the counties of Kings and Richmond, shall be entitled to receive the same compensation for attending all meetings of town boards in his town as each other member of such board in addition to all compensation, salary and fees to which he is now entitled by law for the performance of all the other duties of said office.

§ 87. Per diem allowances of town officers.

No town officer shall be allowed any per diem compensation for his services unless expressly provided by law.

§ 87-a. Payment of salaries monthly.

If, by or in pursuance of law, a town officer is entitled to receive an annual salary, the supervisors of such town may, notwithstanding the provisions of any such law as to the time for payment of such salary, or the audit or allowance thereof, pay to such officer monthly the proportion of such salary to which he shall be entitled out of any moneys of the town in his hands not needed for other purposes, and receipts therefor shall be presented by the supervisor to the board of town auditors, if any, and otherwise to the town board, which receipts if found to be correct shall be audited and allowed at the amount thereof.

Added by L. 1915, ch. 12, in effect February 26, 1915.

§ 236. Acquisition of property by condemnation.

If sewer commissioners are unable to agree with the owners for the purchase of real property necessary for the construction of the sewer system, they may acquire the same by condemnation, whether it be necessary to acquire the fee or an easement for a right of way therein; and whether the property and easements necessary to be acquired are within the territorial limits of the sewer district as established; said sewer commissioners may enter into an agreement with the board of trustees or other duly authorized officer of an adjoining incorporated village, to sewer some part or portion of such incorporated village, and to lay and maintain pipes therein, and when pipes are laid and maintained and sewer system constructed within the limits of an adjoining incorporated village pursuant to an agreement so made, the sewer commissioners shall have the same control and exercise the same rights and privileges in connection with the system constructed within the limits of an incorporated village as they have in connection with the system established within the sewer district as laid out.

Amended by L. 1913, ch. 3, in effect March 11, 1913.

§ 264. Lighting contracts in town and village.

Whenever a town board has established a lighting district in a town, and, thereafter, a portion of said town containing a part of said lighting district, shall have been included within the boundaries of an incorporated village, it shall be lawful for said town board and the board of trustees of said village, in joint session, without petition therefor, to jointly make, renew or extend a contract for the lighting of the whole of said village and the portion of said district in said town, not included in the village, for a period not to exceed five years. For the purpose of such joint action, in separate session a majority vote at a meeting of each town board and village board, upon the same resolution, shall be necessary. If a town board and village board of trustees in joint session, shall make, renew, or extend such a contract, they shall determine the relative proportion of the expense of such lighting which shall be borne by such town and village, respectively, and the amount of such expense to be borne by such town shall be assessed and levied on the taxable property in said lighting district in said town and collected in the same manner and at the same time and by the same officers as town taxes, charges and expenses of such town in which a portion of said district is located, are now assessed, levied and collected, and such relative expense shall be paid over by the supervisor of said town to the corporation, company, person or persons supplying or furnishing said light. The portion of the expense to

be borne by said village, shall be assessed, levied and collected at the same time and in the same manner as other village charges, expenses and taxes are levied, assessed and collected and shall be paid in annual installments commencing with making, renewal or extension of said contract to the corporation, company, person or persons furnishing or supplying said light to the amount of the contract. The expense of such lighting in such village shall not, for each fiscal year, exceed three and one-half mills on every dollar of the taxable property of said village as appears on the last preceding assessment-roll, before the making, renewal or extension of such a contract, unless authorized by a village election.

Added by L. 1917, ch. 280, in effect April 27, 1917.

§ 314-c. Town board may contract for fire protection, et cetera.

The town board of a town, upon the written petition of a majority of the resident taxpayers in territory adjoining a city or incorporated village and wholly without such city or village, may establish such territory as a fire district for the purposes of this section, by filing in the office of the town clerk a certificate describing the boundaries thereof.

Upon the written petition of a majority of the resident taxpayers of any water district, highway district, water supply district, or fire district adjoining a city or an incorporated village, having a fire department or an incorporated fire company therein, the town board of any town may make a contract with any such city or incorporated village for fire protection to be furnished within such water district, highway district, water supply district or fire district for a sum not to exceed in any one year ten cents upon each one hundred dollars of assessed valuation of taxable property lying within such water district, highway district, water supply district or fire district as appears by the last preceding town assessment-roll of said town and for a period not exceeding five years at any one time. The amount of any contract that may be entered into pursuant to the provisions of this section shall be assessed, levied and collected upon the taxable property in said district in the same manner, at the same time and by the same officers as the taxes, charges or expenses of said town are now assessed, levied and collected and the same shall be paid over by the supervisor to the city or incorporated village furnishing such fire protection. This section shall apply to a water supply district formed under the provisions of section eighty-one of the transportation corporations law, as well as to water districts, highway districts, water supply districts or fire districts formed under the provisions of this chapter. No such contract shall be made, however, with any such city or incorporated village unless it has in the opinion of the town board suitable apparatus and appliances for the furnishing of such fire protection in said district. (Added by L. 1917, ch. 364, and amended by L. 1918, ch. 69, in effect March 21, 1918.)

§ 341. Erection and control of town house.

Sites shall be purchased and houses erected by the town board in the name of the town, and shall be controlled by the town board; and the electors may, from time to time, vote such sum of money as may be necessary to keep any town house in repair and insured, except where the building is to

be erected within the limits of an incorporated village and the town is to contribute but a part of the expense of erecting the building, in which case the town board and the board of trustees of the village shall agree upon the terms and conditions of the use, management, control and repair of the portions of the town house for town and village purposes respectively.

§ 342. Town boards may establish public parks and playgrounds.

When authorized by a special meeting of the taxpayers therein, as hereinafter provided, the town board of any town may, from time to time, acquire one or more parcels of land in such town outside an incorporated village for the purpose of establishing thereon one or more public parks or playgrounds, and upon like authority may equip the same with suitable buildings, structures and apparatus, and may thereafter maintain and improve the same at the expense of the town.

Amended by L. 1915, Ch. 300, in effect April 14, 1915.

ARTICLE 19.

Fences.

Section 360. Apportionment of division fence.

- 361. When lands may lie open.
- 362. Division fence on change of title.
- 363. Settlement of disputes.
- 364. Powers of fence viewers.
- 365. Neglect to make or repair division fence.
- 366. Fence destroyed by accident.
- 367. Damages for insufficient fence.
- 368. Damages for omitting to build fence.
- 369. Use of barbed wire for division fence.

§ 360. Apportionment of division fence.

Each owner of two adjoining tracts of land, except when they otherwise agree, shall make and maintain a just and equitable portion of the division fence between such lands, unless both of said adjoining owners shall agree to let their said lands lie open, along the division line, to the use of all animals which may be lawfully upon the lands of either. When the adjoining lands shall border upon any of the navigable lakes, streams or rivers of the state, the owners of the lands shall make and maintain the division fence between them down to the line of low water mark, in such lakes, streams or rivers, except those lands which overflow annually so as to be so submerged with water that no permanent fence can be kept thereon, and known

as low flat lands; and when adjoining lands shall be bounded by a line between the banks of streams of water not navigable, and the owners or occupants thereof cannot agree upon the manner in which the division fence between them shall be maintained, the fence viewers of the town shall direct upon which bank of the stream, and where the division fence shall be located, and the portion to be kept and maintained by each adjoining owner.

Amended by L. 1911, ch. 86.

§ 361. Lands lying open.

When the owners of adjoining lands shall choose to let them lie open, as provided in section three hundred and sixty, neither of such owners shall be liable to the other in any action or proceeding for any damages done by animals lawfully upon the former's premises going upon the lands so lying open or upon any other lands of the owner thereof through such lands so lying open. Either owner of any lands so lying open and adjoining, may, unless the agreement is for a specified period, and after such agreement has expired may then have the same inclosed, by giving written notice to that effect to the owners or occupants of the adjoining lands, whereupon it shall be the duty of both parties to build and maintain their several proportions of a division fence.

Amended by L. 1911, ch. 86.

§ 362. Division fence on change of title.

Whenever a subdivision, or new apportionment of any division fence shall become necessary by reason of transfer of the title of either of the adjoining owners, to the whole, or any portion of the adjoining lands, by conveyance, devise or descent, such subdivision or new apportionment shall thereupon be made by the adjoining owners affected thereby; and either adjoining owner shall refund to the other a just proportion of the value at the time of such transfer of title, of any division fence that shall theretofore have been made and maintained by such other adjoining owner, or the person from whom he derived his title, or he shall build his proportion of such division fence. The value of any fence, and the proportion thereof to be paid by any person, and the proportion to be built by him, shall be determined by any two of the fence viewers of the town, in case of disagreement.

§ 363. Settlement of disputes.

If disputes arise between the owners of adjoining lands, concerning the liability of either party to make or maintain any division fence, or the proportion or particular part of the fence to be made or maintained by either of them, such dispute shall be settled by any two of the fence viewers of the town, one of whom shall be chosen by each party; and if either neglects, after eight days' notice to make such choice, the other party may select both. The fence viewers, in all matters heard by them, shall see that all interested parties have had reasonable notice thereof, and shall examine the premises and hear the allegations of the parties. If they can not agree, they shall select another fence viewer to act with them, and the decision of any two shall be reduced to writing, and contain a description of the fence, and the proportion to be maintained by each, and shall be forthwith filed in the office of the town clerk, and shall be final upon the parties to such dispute, and all parties holding under them.

§ 364. Powers of fence viewers.

Witnesses may be examined by the fence viewers on all questions submitted to them; and either of such fence viewers may issue subpoenas for witnesses, who shall receive the same fees as witnesses in a justice's court. Each fence viewer thus employed shall be entitled to one dollar and fifty cents per diem. The party refusing or neglecting to pay the fence viewers or either of them shall be liable to an action for the same with costs.

§ 365. Neglect to make or repair division fence.

If any person who is liable to contribute to the erection or repair of a division fence, shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall be liable to pay the party injured all such damages as shall accrue thereby, to be ascertained and appraised by any two fence viewers of the town, and to be recovered with costs. The appraisement shall be reduced to writing, and signed by the fence viewers making it. If such neglect or refusal shall be continued for the period of one month after request in writing to make or repair the fence, the party injured may make or repair the same, at the expense of the party so neglecting or refusing, to be recovered from him with costs.

§ 366. Fence destroyed by accident.

Whenever a division fence shall be injured or destroyed by floods, or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof, within ten days after he shall be so required by any person interested therein. Such requisition shall be in writing, and signed by the party making it. If the person so notified shall refuse or neglect to make or repair his proportion of such fence, for the space of ten days after such request, the party injured may make or repair the same at the expense of the party so refusing or neglecting, to be recovered from him with costs.

§ 367. Damages for insufficient fence.

Whenever the electors of any town shall have made any rule or regulation, prescribing what shall be deemed a sufficient division fence in such town, any person who shall thereafter neglect to keep a fence according to such rule or regulation shall be precluded from recovering compensation for damages done by any beast lawfully kept upon the adjoining lands that may enter therefrom on any lands of such person, not fenced in conformity to the said rule or regulation, through any such defective fence. When the sufficiency of a fence shall come in question in any action, it shall be presumed to have been sufficient until the contrary be established.

§ 368. Damages for omitting to build fence.

If any person liable to contribute to the erection or repair of a division fence shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall not be allowed to have and maintain any action for damages incurred by beasts coming thereon from adjoining lands where such beasts are lawfully kept, by reason of such defective fence, but shall be liable to pay to the party injured all damages that shall accrue to his lands, and the crops, fruit trees and shrub-

bery thereon, and fixtures connected with the land, to be ascertained and appraised by any two fence viewers of the town, and to be recovered, with costs; which appraisement shall be reduced to writing and signed by the fence viewers making the same, but shall be only *prima facie* evidence of the amount of such damages.

§ 369. Use of barbed or other wire for division fence.

Barbed or other wire may be used in the construction of any division fence, provided, however, that the person or corporation desiring to use such material shall first obtain from the owner of the adjoining property his written consent that it may be so used. If the owner of the adjoining property refuses to consent to the building of such a fence, it may nevertheless be built in the following manner: The fence shall be of at least four strands of wire with a sufficient bar of wood at the top; and the size of such top bars and of the posts and supports of such fence, and their distances apart, shall be such as the fence viewers of the town may prescribe, and with the posts no further apart than fourteen feet; and such fence shall be otherwise substantially built and reasonably sufficient inclosure for holding the particular kind or class of cattle or animals usually pastured on either side of the fence. Nothing contained in section three hundred and sixty-seven shall be construed to authorize the electors of any town to prohibit the use of wire fences, for division fences, if such fences comply with the requirements of this section. Whenever such fence shall become so out of repair as to be unsafe, it shall be the duty of the owner or owners to immediately repair the same. But any person building such a fence without the written consent of the owner of the adjoining property shall be liable to all damages that may be occasioned by reason of such fence. But this section shall not be so construed as to permit railroad corporations to use barbed wire in the construction of fences along their lines contrary to the provisions of section fifty-two of the railroad law.

Amended by L. 1911, ch. 86.

ARTICLE 29.

Strays.

Section 380. Lien upon strays.

- 381. Notice of lien to town clerk.
- 382. Impounding strays.
- 383. Notice of strays to owner.
- 384. Charges for notice of strays.
- 385. Fees of fence viewers as to strays.
- 386. Foreclosure of lien upon strays.
- 387. Notice of sale of strays by fence viewers.
- 388. Proceeds of sale of strays.
- 389. Notice to owner of strays of fence viewers' meeting.
- 390. Duties of fence viewers as to strays.
- 391. Foreclosure of lien upon strays by action.
- 392. Duty of pound-master as to strays; fees.
- 393. Surplus money upon sale of strays.
- 394. Damages from other personal property.
- 395. Penalty for conversion of floating lumber.
- 396. Application of article.

§ 380. Lien upon strays.

Whenever any person shall have any strayed horses, cattle, sheep, swine or other beasts upon his inclosed land, or shall find any such beast on land owned or occupied by him doing damage, and such beast shall not have come upon such lands from adjoining lands, where they are lawfully kept, by reason of his refusal or neglect to make or maintain a division fence re-

quired of him by law, such person may have a lien upon such beasts for the damage sustained by reason of their so coming upon his lands and doing damage, for his reasonable charges for keeping them, and all fees and costs made thereon, and he may keep such beasts until such damages, charges, fees and costs are paid, or such lien is foreclosed, upon complying with the provisions of this article relating thereto.

§ 381. Notice of lien to town clerk.

If such beasts are not redeemed within five days after coming upon such lands, the person entitled to such lien shall deliver to the town clerk of the town, within which such lands or some part thereof shall be, a written notice subscribed by him, containing his residence, and a description of the beasts so strayed or coming upon his lands, as near as may be, and that he claims a lien on such beasts for such damages, charges, fees and costs. The town clerk shall record the notice in a book to be kept by him for that purpose, for which he shall receive ten cents for each beast, to be paid by the person delivering the notice. Such book shall always be kept open for inspection, and no fees shall be taken by the clerk therefor.

§ 382. Impounding strays.

Within six days after such beasts shall have come upon such lands, such owner or occupant may cause them to be put in the nearest pound in the same town, if there be one, there to remain until they are redeemed, sold or reclaimed according to law. If there be no such pound, or he elect to keep such beasts, he shall cause them to be properly fed and cared for until they are redeemed, sold or reclaimed according to law.

§ 383. Notice of strays to owner.

Within thirty days after any such beasts may have come or been found upon any lands, the owner or occupant of the lands shall serve a written notice, either personally or by mail, upon the owner of the beasts, if known, that they are upon his lands, or in pound, as the case may be, and are held by him as strays or beasts doing damage, as the case may be; and if such owner is not known, he shall publish such notice, within such time, in the nearest newspaper of the county for at least two successive weeks.

§ 384. Charges for notice of strays.

The person delivering the notice to the town clerk shall be entitled to receive therefor, in addition to the fees paid the town clerk, fifteen cents each for all horses, mules, cattle and swine, and five cents for each other beast described in the notice. If the charges, damages, costs and fees are not agreed upon between the person delivering the notice and the owner of the beasts, they shall be determined by two fence viewers of the town, one of whom shall be selected by the person claiming the lien, the other by the fence viewer so selected. If such fence viewers can not agree, they shall select another to act with them, and the decision of any two of them shall be final.

§ 385. Fees of fence viewers as to strays.

Each fence viewer shall be entitled to receive ten cents for every mile he shall be obliged to travel from his residence to the place where the beasts

are kept, and seventy-five cents for a certificate of the charges as ascertained by them.

§ 386. Foreclosure of lien upon strays.

If the owner of such beasts shall not redeem the same within three months after delivery of the notice to the town clerk, the person delivering the notice may foreclose his lien by action, or by a sale of the beasts, as herein provided. When a person claiming a lien, as herein provided, shall fail to establish the same, he shall not be entitled to receive anything for damages, charges, fees or costs, but shall be liable to pay all fees, costs and expenses incurred by reason of his keeping such beasts and the proceedings thereon.

§ 387. Notice of sale of strays by fence viewers.

After such three months, a fence viewer of the town, on application of the person delivering the notice, shall give at least ten days' previous notice of the time and place of the sale of such beasts, by advertisement posted up in at least five public places in the town where such beasts may have been kept, one of which shall be at or near the outside door of the town clerk's office. At the time and place mentioned, such fence viewers shall sell such beasts to the highest bidder, unless redeemed by the owner.

§ 388. Proceeds of sale of strays.

Out of the proceeds from such sale, the fence viewer shall retain and pay the sums charged for such notices, fees and costs, together with the sums specified in the certificate for keeping the beasts, and damages done by them; and the like charges for the sale as are allowed on sales under executions issued out of justices' courts, and he shall pay the residue to the owner of the beasts, if he shall appear and demand the same.

§ 389. Notice to owner of strays of fence viewers' meeting.

When the owner of such beasts is known and resides in the same town where such beasts are kept, five days' notice of the time and place of the meetings of the fence viewers to determine the damages done by such beasts, and the charges for keeping them, shall be personally served on him; if he resides elsewhere, and his post-office address is known, such notice shall be served by mail or personally.

§ 390. Duties of fence viewers as to strays.

The fence viewers shall view the premises where damages are claimed to have been done, and they may issue subpoenas, examine witnesses and take any competent evidence of the facts and circumstances necessary to enable them to determine the matter submitted to them, and shall determine any dispute that may arise touching the sufficiency of any division fence around the premises where such damage was done, and from where and how the beasts came upon the lands of the person claiming such damages and charges; if they determine that for any cause the claimant's lien is not enforceable, they shall so certify, and the owner of the beasts shall thereupon be entitled to them without paying any charges thereon.

§ 391. Foreclosure of lien upon strays by action.

When such lien is foreclosed by action, all questions relating to damages, charges, sufficiency of fence, and from where and how such beasts came upon

the lands of the persons claiming such damages and charges, shall be proven upon the trial of such action, and no certificate of fence viewers upon such questions shall then be necessary.

§ 392. Duty of pound-master as to strays; fees.

Every pound-master shall receive and keep all beasts delivered to him as herein provided, until they shall be redeemed, sold or reclaimed, for which he shall be entitled to a reasonable compensation, not exceeding fifty cents per day for a horse or mule, twenty-five cents per day for each head of cattle, and fifteen cents per day for all other beasts, to be determined by the fence viewers making the sale, or the court before whom the action is tried, besides his fees for taking and discharging the beasts, to be paid by the owner of the beasts, if the lien is established, otherwise by the person claiming a lien thereon.

§ 393. Surplus money upon sale of strays.

If the owner of the beasts shall not appear and demand the residue of such moneys within one year after the sale, he shall be thereafter precluded from recovering any part thereof, and the same shall be paid by the officer making the sale to the overseers of the poor of the town, or, in cities, to the officers having their powers, for the use of the poor thereof, and their receipt shall be a legal discharge to the keeper of such beasts and the officer selling the same. If the officer who shall have sold such beasts shall not, within thirty days after the expiration of the year, pay such moneys to the overseers of the poor of the town, or, in cities, to officers having their powers, he shall forfeit to the town or city double the sum so remaining in his hands, together with the amount of such moneys.

§ 394. Damages from other personal property.

When any person shall be authorized to distrain inanimate goods or chattels doing damage, or whenever any logs, timbers, boards or plank, in rafts or otherwise, or other personal property shall have drifted upon his lands, he shall be entitled to the same remedies, and shall proceed therein in the same manner and with the same powers as herein provided with respect to beasts found doing damage, so far as such provisions are applicable. He must deliver his notice of lien to the town clerk, describing the property, within thirty days after it lodges upon his lands, and he shall keep the same in some convenient place, without removal to a pound, until the property is sold or reclaimed. The same officer shall conduct proceedings therein as in proceedings where beasts are found doing damage, and all proceeds of sale shall be, in like manner, paid over and applied, subject to the same penalties and liabilities, and with the same force and effect. The fee of the town clerk for filing and recording such notices of lien pursuant to section three hundred and eighty-one of this chapter, shall be one dollar and the charges of the land owner claiming such lien and delivering such notice to the town clerk, pursuant to this section, shall be at the rate of five cents for each such stray, but shall in no event exceed the sum of fifty dollars upon any one lien. Any lien for logs, timber, boards or plank, in rafts or otherwise, filed herein may be discharged in the manner provided in sections nineteen and twenty of the lien law, with reference to the discharge of mechanics' liens, so far as such provisions are applicable.

Amended by L. 1915, ch. 439. In effect April 28, 1915.

VI. COUNTY LAW—MISCELLANEOUS PROVISIONS.

(Chapter 11 of the Consolidated Laws.)

§ 15. Legalization of informal acts.

Any such board of supervisors may, by a two-thirds vote of all its members, legalize the informal acts of any town meeting or village election within such county, and the regular acts of any one or more town or village officers, performed in good faith, and within the scope of their authority.

§ 39. Effect of incorporation of village within limits of fire district.

Whenever any fire district is located entirely within the corporate limits of two or more villages by virtue of the incorporation of such villages after the establishment of such fire district, and the said villages or either of them has not been excluded from the limits or boundaries of such fire district in accordance with the provisions of section thirty-eight of this chapter, the town board and the board of fire commissioners of such fire district, shall meet together on the Friday next preceding the annual meeting of the board of supervisors and estimate the amount necessary for the support of the fire department within such fire district, the purchase, lease and maintenance of suitable real estate and buildings for the keeping and storing of the same for the purchase of the water supply for fire purposes and for the payment of debts and accounts which may have become due and shall certify the same to the board of supervisors of the county, which said estimated amount shall, in the same manner as the expenses of the town are raised, be assessed, levied and collected only from the property within such fire district. The collector shall pay the sums thus collected to the supervisor of the town who shall pay the same to the treasurer of the fire district upon the order of the board of fire commissioners.

VII. PUBLIC HEALTH LAW*—MISCELLANEOUS PROVISIONS.

(Chapter 45 of the Consolidated Laws.)

ARTICLE 2.

State Department of Health.

Section 2. State department of health; commissioner of health; deputy.

2-a. Public health council.

2-b. Sanitary code.

2-c. Enforcement of sanitary code.

4. General powers and duties of commissioner.

4-a. Sanitary districts; sanitary supervisors; public health nurses.

11. Power of commissioner where board of health fails to appoint health officer.

17. Violation of health laws or regulations.

§ 2. State department of health; commissioner of health; deputy.

The state department of health and the office of commissioner of health are continued. The commissioner of health shall be the head of such department. Such commissioner shall be appointed by the governor, by and with the advice and consent of the senate, and shall be a physician, a graduate of an incorporated medical college, of at least ten years' experience in the actual practice of his profession, and of skill and experience in public health duties and sanitary science. During his term of office he shall not engage in any occupation which would conflict with the performance of his official duties. The term of office of the commissioner shall be six years, beginning on the first day of January of the year in which he is appointed. The commissioner of health shall appoint and at pleasure remove a deputy commissioner, who shall be a physician actively engaged in the practice of his profession in this state for at least five years. The deputy shall perform such duties as shall be prescribed by the commissioner. (Amended by L. 1913, ch. 559. In effect May 16, 1913.)

§ 2-a. Public health council.

There shall be a public health council to consist of the commissioner of health, and six members hereinafter called the appointive members, to be appointed by the governor, of whom at least three shall be physicians and shall have had training or experience in sanitary science, and one shall be a sanitary engineer. Of the appointive members first appointed one shall

EDITOR'S NOTE.—For a full treatment of this subject see Parker and Worthington on Public Health and Safety, also Bender's Health Officers' Manual.

hold office until January first, nineteen hundred and fourteen, one until January first, nineteen hundred and fifteen, one until January first, nineteen hundred and sixteen, one until January first, nineteen hundred and seventeen, one until January first, nineteen hundred and eighteen, and one until January first nineteen hundred and nineteen, and the terms of office of members thereafter appointed, except to fill vacancies, shall be six years. Vacancies shall be filled by appointment for the unexpired term. The public health council shall meet as frequently as its business may require, and at least twice in each year. The governor shall designate one of the members of the public health council as its chairman. The commissioner of health upon the request of the public health council shall detail an officer or employee of the department of health to act as secretary of the public health council, and shall detail from time to time such other employees as the public health council may require. The public health council shall enact and from time to time may amend by-laws in relation to its meetings and the transaction of its business. The members of the public health council other than the commissioner of health shall each receive an annual salary of one thousand dollars and all members shall be reimbursed for their reasonable and necessary traveling and other expenses incurred in the performance of their official duties. (Added by L. 1913, ch. 559. In effect May 16, 1913.)

§ 2-b. Sanitary code.

The public health council shall have power by the affirmative vote of a majority of its members to establish and from time to time amend sanitary regulations, hereinafter called the sanitary code, without discrimination against any licensed physicians. The sanitary code may deal with any matters affecting the security of life or health or the preservation and improvement of public health in the state of New York, and with any matters as to which jurisdiction is hereinafter conferred upon the public health council. The sanitary code may include provisions regulating the practice of midwifery and for the promotion of health in any or all Indian reservations. Every regulation adopted by the public health council shall state the date on which it takes effect, and a copy thereof, duly signed by the secretary of the public health council, shall be filed in the office of the secretary of state, and a copy thereof shall be sent by the commissioner of health to each health officer within the state, and shall be published in such manner as the public health council may from time to time determine. The provisions of the sanitary codes shall have the force and effect of law and any violation of any portion thereof may be declared to be a misdemeanor. No provision of the sanitary code shall relate to the city of New York or any portion thereof, and every provision of the sanitary code shall apply to and be effective in all portions of the state except the city of New York unless stated otherwise. (Added by L. 1913, ch. 559. In effect May 16, 1913.)

§ 2-c. Enforcement of sanitary code.

The provisions of the sanitary code shall, as to matters to which it relates, and in the territory prescribed therefor by the public health council, super-

sede all local ordinances heretofore or hereafter enacted inconsistent therewith. Each city, town or village may, in the manner hereinafter prescribed, enact sanitary regulations not inconsistent with the sanitary code established by the public health council. The public health council shall have power to prescribe by regulations the qualifications of directors of divisions, sanitary supervisors, local health officers hereafter appointed and public health nurses.

The actions, proceedings and authority of the state health department in enforcing the provisions of the public health law and sanitary code applying them to specific cases shall at all times be regarded as in their nature judicial, and shall be treated as *prima facie* just and legal. All meetings of said public health council shall in every suit and proceeding be taken to have been duly called and regularly held, and all regulations and proceedings to have been duly authorized unless the contrary be proved.

The public health council shall have no executive, administrative or appointive duties. It shall, at the request of the commissioner of health, consider any matter relating to the preservation and improvement of public health, and may advise the commissioner thereon; and it may from time to time submit to the commissioner any recommendations which it may deem wise. (Added by L. 1913, ch. 559. In effect May 16, 1913.)

§ 4. General powers and duties of commissioner.

The commissioner of health shall take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto. He shall exercise general supervision over the work of all local health authorities except in the city of New York. He shall be charged with the enforcement of the public health law and the sanitary code. He shall make inquiries in respect to the causes of disease, especially epidemics, and investigate the sources of mortality, and the effect of localities, employments and other conditions, upon the public health. He shall obtain, collect and preserve such information relating to mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state. He may issue subpoenas, compel the attendance of witnesses and compel them to testify in any matter or proceeding before him, and a witness may be required to attend and give testimony in a county where he resides or has a place of business without the payment of any fees. The commissioner of health may reverse or modify an order, regulation, by-law or ordinance of a local board of health concerning a matter which in his judgment affects the public health beyond the territory over which such local board has jurisdiction; and may exercise exclusive jurisdiction over all lands acquired by the state for sanitary purposes. The commissioner of health and any person authorized by him so to do, may, without fee or hindrance, enter, examine and survey all grounds, erections, vehicles, structures, apartments, buildings and places. (Amended by L. 1913, ch. 559. In effect May 16, 1913.)

§ 4-a. Sanitary districts; sanitary supervisors; public health nurses.

The commissioner of health shall from time to time divide the state, except cities of the first class, into twenty or more sanitary districts. He shall appoint for each of such districts a sanitary supervisor who shall be a physician. Each sanitary supervisor, under the direction of the commissioner of health and subject to the provisions of the sanitary code, shall, in addition to such other duties as may be imposed upon him, perform the following duties:

1. Keep himself informed as to the work of each local health officer within his sanitary district;
2. Aid each local health officer within his sanitary district in the performance of his duties, and particularly on the appearance of any contagious disease;
3. Assist each local health officer within his sanitary district in making an annual sanitary survey of the territory within his jurisdiction, and in maintaining therein a continuous sanitary supervision;
4. Call together the local health officers within his district or any portion of it from time to time for conference;
5. Adjust questions of jurisdiction arising between local health officers within his district;
6. Study the causes of excessive mortality from any disease in any portion of his district;
7. Promote efficient registration of births and deaths;
8. Inspect from time to time all labor camps within his district and enforce the regulations of the public health council in relation thereto;
9. Inspect from time to time all Indian reservations and enforce all provisions of the sanitary code relating thereto;
10. Endeavor to enlist the co-operation of all the organizations of physicians within his district in the improvement of the public health therein;
11. Promote the information of the general public in all matters pertaining to the public health;
12. Act as the representative of the state commissioner of health, and under his direction, in securing the enforcement within his district of the provisions of the public health law and the sanitary code.

The commissioner of health whenever he may deem it expedient so to do, may employ such number of public health nurses as he may deem wise within the limits of his appropriation, and may assign them from time to time to such sanitary districts and in such manner as in his judgment will best aid in the control of contagious and infectious diseases and in the promotion of public health. (Added by L. 1913, ch. 559. In effect May 16, 1913.)

§ 11. Power of commissioner where board of health fails to appoint health officer.

If any local board of health shall fail to appoint a health officer, the commissioner of health may, in such municipality, exercise the powers of a health officer thereof. The expenses lawfully incurred by him in such municipality shall be a charge upon and paid by such municipality until such time as a local health officer shall be appointed therein, whereupon the jurisdiction of the commissioner of health conferred by this section shall cease. (Amended by L. 1913, ch. 559. In effect May 16, 1913.)

§ 17. Violations of health laws or regulations.

Any person violating, disobeying or disregarding the terms of any lawful notice, order or regulation prescribed by the state commissioner of health or by the sanitary code, or any provision of the public health law or sanitary code, for which a civil penalty is not otherwise expressly prescribed by law, shall be liable to the people of the state for a civil penalty of not to exceed fifty dollars for every such violation. The said penalty may be recovered by an action brought by the state commissioner of health in any court of competent jurisdiction. Nothing in this section contained shall be construed to alter or repeal any existing provision of law declaring such violations or any of them misdemeanors or felonies or prescribing the penalty therefor.

Added by L. 1916, Ch. 348, and amended by L. 1916, Ch. 372, in effect May 1, 1916.

ARTICLE 3.

Local Boards of Health.

Section 20. Local boards of health.

- 20-a. Expense of consolidated health district.
- 21. General powers and duties of local boards of health.
 - 21-a. Powers and duties as to sewers.
 - 21-b. General powers and duties of health officers.
 - 21-c. Public health nurses.
- 22. Vital statistics.
- 23. Burials and burial permits.
- 24. Regulating interments in cemeteries.
- 25. Infectious and contagious or communicable diseases.
- 26. Nuisances.
- 27. Owner to bear all or part of expense of removal of waters where mosquito larvae breed.
- 28. Assessing costs on property benefited.
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- 30. Assessing expense upon property benefited.
- 31. Removal of nuisances.
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- 33. Manufactures in tenement houses and dwellings.
- 34. Jurisdiction of town boards.
- 35. Expenses, how paid.
- 36-a. Providing for the care and maintenance of carriers of disease.
- 37. Mandamus.

§ 20. Local boards of health.

There shall continue to be local boards of health and health officers in the several cities, villages and towns of the state except as hereinafter provided. In the cities, except cities of the first and second class, the board shall consist of the mayor of the city who shall be its president, and at least six other persons, one of whom shall be a competent physician, who shall be appointed by the common council, upon the nomination of the mayor, and shall hold office for three years. Appointments of members of such boards shall be

made for such shorter terms as at any time may be necessary, in order that the terms of two appointed members shall expire annually. In the cities, except cities of the first and second class, and such other cities whose charters otherwise provided, the board shall appoint, for a term of four years, a competent physician, not one of its members, to be the health officer of the city, and shall fill any vacancy that now exists or may hereafter exist from expiration of term or otherwise in the office of health officer of the city. In villages the board of health shall consist of the board of trustees of such village. In towns the board of health shall consist of the town board. The local board of health shall appoint a competent physician, not a member of the local board of health, to be the health officer of the municipality. Notwithstanding the provisions of any general or local law or charter, a physician who has received the degree of doctor of public health in course from any institution of learning recognized by the regents of the university of the state of New York, or who has completed a course in public health approved by the public health council at the time of his appointment, shall be eligible for appointment as health officer. The term of office of the health officer shall be four years and he shall hold office until the appointment of his successor. He may be removed for just cause by the local board of health or the state commissioner of health after a hearing; such removal by the local board of health must be approved by the state commissioner of health. The health officer need not reside within the village or town for which he shall be chosen. Notice of the membership and organization of every local board of health shall be forthwith given by such board to the state department of health. The term "municipality," when used in this article, means the city, village, town or consolidated health district for which any such local board may be or is appointed. The provisions herein contained as to boards of health, and for the appointment of health officers, shall apply to all towns and villages, whether such villages are organized under general or special laws. The members of town boards and of village boards of trustees and of boards of health of consolidated health districts shall not receive additional compensation by reason of serving as members of boards of health. Any matter within the jurisdiction of a town or village board of health may be considered and acted upon at any meeting of such town board or village board of trustees.

The state commissioner of health, on the request of the town board of any town and the board of trustees of any village and the common council or other like authority of any city, may combine into one health district, hereinafter referred to as a consolidated health district, any two or more of such towns, villages or cities and may on the request of the town board of any town, board of trustees of any village or common council or other like author-

ity of any city at any time thereafter set apart such town, village or city as a separate health district. In any consolidated health district there shall be a board of health which shall consist of the supervisor of each town, the president of the board of trustees of each village, and the mayor of each city included in each district, provided that if the number of members so provided for is an even number, such members shall within thirty days after such district shall have been established by the state commissioner of health choose an additional member of such board of health to be known as the elective member. An elective member shall serve for a term of two years from the first day of January preceding his election and until his successor shall have been appointed, provided that if at any time the number of members of the board of health, excluding the elective member, shall become an odd number, the term of office of the elective member shall thereupon cease.

The board of health of a consolidated health district shall from time to time elect a president from among its members. The health officer of a consolidated health district shall serve as the secretary of the board of health thereof without additional remuneration therefor.

In each such consolidated health district the board of health shall appoint a health officer. Each board of health and each health officer of a consolidated health district shall have all the rights, powers, duties and obligations conferred and imposed by law upon boards of health and health officers respectively.

When any consolidated health district is established, as herein provided, the boards of health of the towns, villages or cities included within such district, shall thereupon cease to exist as boards of health, and all their rights, powers, duties and obligations shall thereupon be transferred to the board of health of such district. When the board of health of any such consolidated health district shall have appointed a health officer therefor, the terms of office of the health officers of the towns, villages or cities included in such district shall cease, and all their rights, powers, duties and obligations shall thereupon be transferred to and imposed upon the health officer appointed for such consolidated health district.

The board of health of any such consolidated health district shall from time to time audit all accounts, and allow or reject all charges, claims and

demands against such health district for the remuneration and expenses of the health officer, registrar or registrars, and for all other expenses lawfully incurred by said board of health or on its authority. Unless such board of health of such consolidated health district adopts the estimate system of payment as provided by this section they shall, prior to the annual meeting of the board of supervisors each year, make an abstract, to be known as the consolidated health district abstract, of the names of all persons who have presented to them accounts to be audited, the amounts claimed by each such person and the amounts finally audited and approved by them respectively, and, if such district be wholly in one county, shall deliver such abstract to the clerk of the board of supervisors. If such consolidated health district be located in more than one county the board of health of such district shall divide the total amount of the consolidated health district abstract as audited and approved in proportion to the assessed valuation of the real and personal property of the towns, villages or cities of such consolidated health district located in each county, as determined by the last preceding assessment-rolls of the towns or cities wholly or partly included in such district, and shall deliver a certified copy of such abstract to the board of supervisors of each such county, with a statement of the amount due from the real and personal property of each town, village or city of the consolidated health district in each such county on account of the expenses of such board. The board of supervisors of each such county shall levy a tax upon the real and personal property within such health district sufficient to provide for the sums audited and approved by the board of health thereof and chargeable to the real and personal property of each town, village or city of the consolidated health district in each such county. Such sums, when collected and paid to the county treasurer of each such county respectively, shall be paid by him to the president of such board of health and shall be disbursed by him in accordance with the abstract of claims audited and approved by such board of health, as hereinabove provided.

The board of health of any consolidated health district may annually make an estimate of the expenses of such board for the ensuing calendar year and, if such district be wholly in one county, shall deliver a certified copy of such estimate to the clerk of the board of supervisors of such county prior to the annual meeting of the board preceding such year. If such con-

solidated health district be located in more than one county, the board of health of such district shall proportion the total amount of such estimate in the same manner as provided by this section for proportioning the expenses of such a district when audited and approved by the board, and shall deliver to the clerk of the board of supervisors of each such county a certified statement of the total estimate and the amount due from the real and personal property of each town, village or city of the consolidated health district in each such county on account thereof. The board of supervisors of each such county shall levy a tax upon the real and personal property within such health district sufficient to provide for the portion of the amount of such estimate chargeable to the real and personal property of each town, village or city of the consolidated health district in each such county. Such sums, when collected and paid to the county treasurer of each county respectively shall be paid by him to the president of such board of health and shall be disbursed by the board of health in accordance with the estimates. After such estimate system has been adopted by a consolidated health district, the board of health thereof shall deduct from the estimate for the succeeding calendar year the amount, if any, remaining in the hands of such board after all of the liabilities incurred on account of the preceding estimate have been paid, before the certified statement of the total estimate and the amount due from the real and personal property of each town, village or city of the consolidated health district in each such county is certified to the respective clerks of the boards of supervisors for collection.

Amended by L. 1909, ch. 105; L. 1913, ch. 559; L. 1915, chs. 124 and 655; L. 1916, ch. 369; L. 1918, ch. 275, in effect April 19, 1918.

§ 20-a. Expenses of consolidated health district.

A consolidated health district may adopt the estimate system as provided by section twenty of this chapter, and, as provided by such section, may make and file with the clerk of the board of supervisors of the county, or if such district be located in more than one county, with the clerk of the board of supervisors of each such county, an estimate for the remainder of the current year and for the ensuing calendar year, and may issue a certificate of indebtedness upon the credit of the district for such portion of such esti-

mate as may be needed to pay the expenses of the board until the tax levied on account of such assessment shall have been collected and paid to the board as provided by section twenty of this chapter. Such tax when collected shall be applicable in the first instance to the payment of such certificate.

Added by L. 1917, Ch. 182, in effect April 16, 1917.

§ 21. General powers and duties of local boards of health.

Every such local board of health shall meet at stated intervals to be fixed by it, in the municipality. The presiding officer of every such board may call special meetings thereof when in his judgment the protection of the public health of the municipality requires it, and he shall call such meeting upon the petition of at least twenty-five residents thereof, of full age, setting forth necessity of such meeting. Every such local board, subject to the provisions of the public health law and of the sanitary code, shall prescribe the duties and powers of the local health officer, who shall be its chief executive officer, and direct him in the performance of his duties, and fix his compensation, which in case of health officers of cities, towns and villages, having a population of eight thousand or less, shall not be less than the equivalent of ten cents per annum per inhabitant of the city, town or village according to the latest federal or state enumeration; and in cities, towns and villages having a population of more than eight thousand shall not be less than eight hundred dollars per annum. In addition to his compensation so fixed, the board of health must allow the actual and reasonable expenses of said health officer in the performance of his official duties and in going to, attending and returning from, the annual sanitary conference of health officers, or equivalent meeting, held yearly within the state, and conferences called by the sanitary supervisor of the district, and whenever the services rendered by its health officer shall include the care of smallpox, the board of health shall allow, or whenever such services are extraordinary, by reason of infectious diseases, or otherwise, they may in their discretion, allow to him such further sum in addition to said fixed compensation as shall be equal to the charges for consultation services in the locality, audited by the town board of a town, by the board of trustees of a village or by the proper auditing board of a city of the third class, which said expenses and said additional compensa-

tion shall be a charge upon and paid by the municipality as provided in section thirty-five of this chapter. Every such local board shall make and publish from time to time all such orders and regulations, not inconsistent with the provisions of the sanitary code, as it may deem necessary and proper for the preservation of life and health and the execution and enforcement of this chapter in the municipality. It shall make without publication thereof, such orders and regulations for the suppression of nuisances and concerning all other matters in its judgment detrimental to the public health in special or individual cases, not of general application, and serve copies thereof upon the owner or occupant of any premises whereon such nuisances or other matters may exist, or upon which may exist the cause of other nuisances to other premises, or cause the same to be conspicuously posted thereon. The health officer may employ such persons as shall be necessary to enable him to carry into effect the orders and regulations of the board of health and the provisions of the public health law and of the sanitary code, and fix their compensation within the limits of the appropriation therefor. The board of health may issue subpoenas, compel the attendance of witnesses, administer oaths to witnesses and compel them to testify, and for such purposes it shall have the same powers as a justice of the peace of the state in a civil action of which he has jurisdiction. It may designate by resolution one of its members to sign and issue such subpoenas. No subpoena shall be served outside the jurisdiction of the board issuing it, and no witness shall be interrogated or compelled to testify upon matters not related to the public health. It may issue warrants to any constable or policeman of the municipality to apprehend and remove such persons as cannot otherwise be subjected to its orders or regulations, and a warrant to the sheriff of the county to bring to its aid the power of the county whenever it shall be necessary to do so. Every warrant shall be forthwith executed by the officer to whom directed, who shall have the same powers and be subject to the same duties in the execution thereof, as if it had been duly issued out of a court of record of the state. Every such local board may prescribe and impose penalties for the violation of or failure to comply with any of its orders or regulations, not exceeding one hundred dollars for a single violation or failure, to be sued for and recovered by it in the name and for the benefit of the municipality; and may maintain actions in any court of competent jurisdiction to restrain by injunction such violations, or otherwise to enforce such orders and regulations. (Amended by L. 1909, ch. 480; L. 1913, ch. 559. In effect May 16, 1913.)

§ 21-a. Powers and duties as to sewers.

Whenever such local board of health in any incorporated village shall deem the sewers of such village insufficient to properly and safely sewer such village, and protect the public health, it shall certify such fact in writing, stating and recommending what additions or alterations should in the judgment of such board of health be made, with its reasons therefor, to the state commissioner of health for his approval, and if such recommendations shall be approved by the state commissioner of health, it shall be the duty of the board of trustees or other board of such village having jurisdiction of the construction of sewers therein, if there be such a board, whether sufficient funds shall be on hand for such purpose or not, to forthwith make such addi-

tions to or alterations in the sewers of such village and execute such recommendations, and the expenses thereof shall be paid for wholly by said village in the same manner as other village expenses are paid or by an assessment of the whole amount against the property benefited, or partly by the village and partly by an assessment against the property benefited, as the board of trustees of such village shall by resolution determine. If the board of trustees shall determine that such expenses shall be paid partly by the village and partly by an assessment against the property benefited, as authorized by this section, it shall in the resolution making such determination fix the proportion of such expense to be borne by each, and the proportion thereof to be raised by an assessment against the property benefited shall be assessed and collected in the manner provided by the village law for the assessment and collection of sewer assessments. Said village is hereby authorized to raise such sum as may be necessary for the payment of the expenses incurred, which are a village charge, if any, as herein provided, in addition to the amount such village is now authorized to raise by law for corporation purposes, and such board shall have the right to acquire such lands, rights of way, or other easements, by gift, or purchase, or in case the same cannot be acquired by purchase may acquire the same by condemnation in the manner provided by law. (Added by L. 1913, ch. 559. In effect May 16, 1913.)

§ 21-b. General powers and duties of health officers.

Health officers of towns and villages, in addition to such other duties as may be lawfully imposed upon them and subject to the provisions of the public health law and the sanitary code, shall perform the following duties:

1. Make an annual sanitary survey and maintain a continuous sanitary supervision over the territory within their jurisdiction.
2. Make a medical examination of every school child as soon as practicable after the opening of each school year, except in those schools in which the authorities thereof make other provision for the medical examination of the pupils.
3. Make a sanitary inspection periodically of all school buildings and places of public assemblage, and report thereon to those responsible for the maintenance of such school buildings and places of public assemblage.
4. Promote the spread of information as to the causes, nature and prevention of prevalent diseases, and the preservation and improvement of health.
5. Take such steps as may be necessary to secure prompt and full reports by physicians of communicable diseases, and prompt and full registration of births and deaths.
6. Enforce within their jurisdiction the provisions of the public health law and the sanitary code.
7. Attend the annual conferences of sanitary officers called by the state department of health, and local conferences within his sanitary district, to which he may be summoned by the sanitary supervisor thereof.

The written reports of public health officers, inspectors, nurses and other representatives of public health officers on questions of fact under the public health law or under the sanitary code or any local health regulation shall be presumptive evidence of the facts so stated, and shall be received as such in all courts and places. The persons making such reports shall be exempt from personal liability for the statements therein made, if they have acted in good faith.

No health officer, inspector, public health nurse, or other representative of a public health officer, and no person or persons other than the city, village or town by which such health officer or representative thereof is employed shall be sued or held to liability for any act done or omitted by any such health officer or representative of a health officer in good faith and with ordinary discretion on behalf or under the direction of such city, village or town or pursuant to its regulations or ordinances, or the sanitary code, or the public health law. Any person whose property may have been unjustly or illegally destroyed or injured pursuant to any order, regulation or ordinance, or action of any board of health or health officer, or representative of a health officer, for which no personal liability may exist as aforesaid, may maintain a proper action against the city, village or town for the recovery of proper compensation or damages. Every such suit must be brought within six months after the cause of action arose and the recovery shall be limited to the damages suffered. (Added by L. 1913, ch. 559. In effect May 16, 1913.)

§ 21-c. Public health nurses.

Each health officer or other official exercising similar duties, by whatever official designation he may be known, shall have power to employ such number of public health nurses as in his judgment may be necessary within the limits of the appropriation made therefor by the city, town or village. They shall work under the direction of the health officer and may be assigned by him to the reduction of infant mortality, the examination or visitation of school children or children excluded from school, the discovery or visitation of cases of tuberculosis, the visitation of the sick who may be unable otherwise to secure adequate care, the instruction of members of households in which there is a sick person, or to such other duties as may seem to him appropriate. (Added by L. 1913, ch. 559. In effect May 16, 1913.)

§ 24. Regulating interments in cemeteries.

Whenever the common council of any city of the third class shall deem that further interments in any cemetery in such city would be detrimental to the public health, it may by resolution direct its clerk to cause a notice to be served upon the person or corporation owning or controlling such cemetery and published once in a week for three successive weeks in two papers published in such city, stating a time and place not less than thirty days after service and first publication of such notice, at which any person interested may show cause to the common council why further interments in such cemetery should not be prohibited. At the time and place specified in such notice the common council shall hear all persons desiring to be heard, and if upon such hearing it appears that further interments in such cemetery will be detrimental to public health, the common council may by resolution prohibit further interments therein. If such resolution is adopted a certified copy thereof shall be filed by the clerk of the common council with the board of health of such city, and thereafter such board shall not issue any permits for interments in such cemetery. The action of the common council in passing such resolution may be reviewed within thirty days thereafter by writ of certiorari as provided by the code of civil procedure.

§ 25. Infectious and contagious or communicable diseases.

Every local board of health and every health officer shall guard against the introduction of such infectious and contagious or communicable diseases as are designated in the sanitary code, by the exercise of proper and vigilant medical inspection and control of all persons and things infected with or exposed to such diseases, and provide suitable places for the treatment and care of sick persons who cannot otherwise be provided for. They may, subject to the provisions of the sanitary code, prohibit and prevent all intercourse and communication with or use of infected premises, places and things, and require, and if necessary, provide the means for the thorough purification and cleansing of the same before general intercourse with the same or use thereof shall be allowed. Every physician shall immediately give notice of every case of infectious and contagious or communicable disease required by the state department of health to be reported to it, to the health officer of the city, town or village where such disease occurs, and no physician being in attendance on such case, it shall be the duty of the superintendent or other officer of an institution, householder, hotel or lodging house keeper, or other person where such case occurs, to give such notice. Whenever an examination for diagnosis by a laboratory, or by any person other than the physician in charge of the person from whom the specimen is taken, of any specimen discloses the existence of a case of infectious and contagious or communicable disease, the person in charge of such laboratory or the person making such examination shall immediately report the same, together with all the facts in connection therewith, to the health officer of the city, town or village where such laboratory is situated and also to the health officer of the city, town or village from which such specimen came and shall keep a permanent record of all the facts in connection with such examination, including the identity of the person from whom the specimen is taken and the name of the physician, if any, sending such specimen. The physician or other person giving such notice shall be entitled to the sum of twenty-five cents therefor, which shall be a charge upon and paid by the municipality where such case occurs. Every local

health officer shall report to the state department of health, promptly, all cases of such infectious and contagious or communicable diseases, as may be required by the state department of health, and for such reporting the health officer of a village or town shall be paid by the municipality employing him, upon the certification of the state department of health, a sum not to exceed twenty cents for each case so reported. The reports of cases of tuberculosis made pursuant to the provisions of this section shall not be divulged or made public so as to disclose the identity of the persons to whom they relate, by any person; except in so far as may be authorized by the public health council. The board of health shall provide at stated intervals, a suitable supply of vaccine virus, of a quality and from a source approved by the state department of health, and during an actual epidemic of smallpox obtain fresh supplies of such virus at intervals not exceeding one week, and at all times provide thorough and safe vaccination for all persons in need of the same. If a pestilential, infectious or contagious disease exists in any county almshouse or its vicinity, and the physician thereof shall certify that such disease is likely to endanger the health of its inmates, the county superintendent of the poor may cause such inmates or any of them to be removed to such other suitable place in the county as the local board of health of the municipality where the almshouse is situated may designate, there to be maintained and provided for at the expense of the county, with all necessary medical care and attendance until they shall be safely returned to such almshouse or otherwise discharged. The health officer, commissioner of health, or boards of health of the cities of the first class shall report promptly to the state department of health all cases of smallpox, typhus and yellow fever and cholera and the facts relating thereto. (Amended by L. 1913, ch. 559, and L. 1918, ch. 177, in effect April 10, 1918.)

§ 26. Nuisances.

Every such board shall receive and examine into all complaints made by any inhabitant concerning nuisances, or causes of danger or injury to life and health within the municipality, and may enter upon or within any place or premises where nuisances or conditions dangerous to life and health or which are the cause of nuisances existing elsewhere are known or believed to exist, and by its members or other persons designated for that purpose, inspect and examine the same. The owners, agents and occupants of any such premises shall permit such sanitary examinations to be made, and the board shall furnish such owners, agents and occupants with a written statement of the results and conclusions of any such examination. Every such local board shall order the suppression and removal of all nuisances and conditions detrimental to life and health found to exist within the municipality. Whenever the state department of health shall by notice to the presiding officer of any local board of health, direct him to convene such local board to take certain definite proceedings concerning which the state department of health shall be satisfied that the action recommended by them is necessary for the public good, and is within the jurisdiction of such board of health, such presiding officer shall convene such local board, which shall take the action directed.

§ 27. Owner to bear all or part of expense of removal of waters wherein mosquito larvae breed.

Whenever the local board of health of a municipality shall determine that any accumulation of water wherein mosquito larvae breed, constitutes a nuisance or a danger or injury to life or health, the owner or owners of the premises on which the breeding place is located shall bear the expense of its

suppression or removal, or so much thereof as the local board may have determined to be equitable as hereinafter provided, and for the amount thereof an action may be maintained in the name of the municipality and the same shall become a first lien on the premises as provided by sections thirty-one and thirty-two of this article. (Amended by L. 1913, ch. 559. In effect May 16, 1913.)

§ 28. Assessing cost on property benefited.

If such local board shall determine, in its discretion, that, owing to the natural conditions which are favorable to the breeding of mosquitoes and owing to the benefits to be secured to the public by the suppression of such conditions, some part or all of the expense of suppressing or removing a breeding place for mosquitoes should, in equity, be borne by the owners of the property which will be benefited by such suppression or removal, the local board shall make application as hereinafter provided, for the appointment of three commissioners, and the county court of the county in which are situated the premises whereon the breeding place is located, or, in case such premises are situated in more than one county, the supreme court, shall thereupon appoint three persons as commissioners to proceed with the work necessary for the suppression or removal of such breeding place, and to apportion, assess and collect the cost thereof, as so determined from the owners of such property benefited. Such appointment, apportionment, assessment and collection shall be made in the manner provided for the appointment of commissioners to suppress and remove any such breeding place by draining the premises on which such breeding place is located by means of ditches and channels constructed over lands belonging to others and the owners of the premises to be drained and to apportion, assess and collect the cost thereof from the owners of the property benefited thereby. In any case where, under the provisions of this article commissioners are to determine what property is benefited and to what extent said property is benefited by the suppression or removal of any such breeding place, such commissioners shall not be restricted in their determination to property immediately adjoining the premises whereon such breeding place is located; and, in apportioning the benefit to any property, such commissioners may consider any circumstances by reason whereof any property will be benefited by the suppression and removal of such breeding place.

§ 29. Municipality may bear part of expense.

If such local board shall have determined that, owing to the natural conditions which are favorable to the breeding of mosquitoes and owing to the benefit to be secured to the public by the suppression of such conditions, a part of the expense of such suppression or removal shall be borne by the owner of such premises and a part thereof by the municipality wherein the premises are situated, such owner or occupant may proceed to suppress or remove such breeding place and shall be reimbursed by the municipality for such proportion of the reasonable expense of such suppression or removal as the local board shall have determined should be borne by the municipality. For the purpose of ascertaining the actual cost of such suppression or removal, the local board or its duly authorized agents may at all times have access to the premises whereon the work is being carried on; and the owner of the premises shall furnish to such local board such information as

such local board may deem necessary or desirable for the purpose of ascertaining such actual cost. If in any such case the owner of the premises shall not, within a reasonable time, proceed to suppress or remove such breeding place, the local board may proceed to suppress and remove the same, and for such proportion of the expense of such suppression and removal as the local board shall have determined to be equitable, an action may be maintained against such owner, and the same shall become a first lien upon the premises as above provided.

§ 30. Assessing expense upon property benefited.

If such local board shall deem it necessary, in order to suppress or remove any such breeding place, that any swamp, bog, meadow or other low or wet lands within the municipality over which said board has jurisdiction, shall be drained and that it is necessary, in order thereto, that a ditch or ditches or other channel for the free passage of water should be opened through lands belonging to a person or persons other than the owners of said swamp, bog, meadow or other low or wet lands, or that any other act or thing be done upon or over land belonging to others than the owners of the lands whereon such breeding place shall be located, such board shall make application for the appointment of three commissioners to construct and complete such channels and ditches for the free passage of water, or to do such other act or thing as such local board shall have determined to be necessary upon such lands in order to suppress or remove such breeding place, and to apportion, assess and collect the amount of the cost thereof from the owners of the lands which will be benefited by the suppression and removal of such breeding place. Such commissioners shall be appointed, and shall proceed, when appointed, to construct and complete such channels and ditches, or do such other act or thing as may be necessary, and to apportion, assess and collect the cost of the same from the owners of the lands benefited by such suppression or removal, in the manner provided for the appointment of commissioners for the drainage of any swamp, bog, meadow or other low or wet land and the apportionment, assessment and collection of the cost of such drainage, by the drainage law, and this article shall be construed with the provisions of such drainage law. In case of conflict the provisions of this article shall be substituted for the provisions of such drainage law, but such parts of the provisions of the drainage law as are not necessarily superseded shall apply.

§ 31. Removal of nuisances.

If the owner or occupant of any premises whereon any nuisance or condition deemed to be detrimental to the public health exists or the cause of the existence elsewhere, fails to comply with any order or regulation of any such local board for the suppression and removal of any such nuisance or other matter, in the judgment of the board detrimental to the public health, made, served or posted as required in this article, such board or their servants or employees may enter upon the premises to which such order or regulation relates, and suppress or remove such nuisance or other matter. The expense of such suppression or removal shall be paid by the owner or occupant of such premises, or by the person who caused or maintained such nuisance or other matters, and the board may maintain an action in the name of the

municipality to recover such expense, and the same when recovered shall be paid to the treasurer of the municipality, or if it has no treasurer to its chief fiscal officer, to be held and used as the funds of the municipality. Whenever the suppression or removal of such nuisance or conditions detrimental to health demand the immediate expenditure of money, every such local board of health shall be authorized to use for such purpose any money in the hands of the board, or may call on the city council for such money or it may borrow the same on the credit of the municipality. All such moneys so expended or borrowed shall be immediately repaid to the fund or source whence they were received on the recovery of the same by action or otherwise from the persons responsible for the expenses of suppression or removal. (Amended by L. 1913, ch. 559. In effect May 16, 1913.)

§ 32. Expense of abatement of nuisances a lien upon the premises.

If execution upon a judgment for the recovery of the expense of the suppression or removal of a nuisance or other matter, pursuant to an order or regulation of any such local board, is returned wholly or in part unsatisfied, such judgment, if docketed in the place and manner required by law to make a judgment of a court of record a lien upon real property, shall be a first lien upon such premises, having preference over all other liens and incumbrances whatever. The board may cause such premises to be sold for a term of time for the payment and satisfaction of such lien and the expenses of the sale. Notice of such sale shall be published for twelve weeks successively, at least once in each week, in a newspaper of the city, village or town, or if no newspaper is published therein, in the newspaper published nearest to such premises. If the owner or occupant of the premises, or his agent, is known, a copy of such notice shall be served upon him, either personally, at least fourteen days previous to the sale, or by mail at least twenty-eight days prior thereto. The premises shall be sold to the person offering to take them for the shortest time, paying the amount unpaid on such judgment and interest and the expenses of such notice and sale. A certificate of the sale, signed and acknowledged by the president and secretary of the board, shall be made and delivered to the purchaser, and may be recorded as a conveyance of real property, and the purchaser shall thereupon be entitled to the immediate possession of such premises, and, if occupied, may maintain an action or proceeding to recover the possession thereof against the occupant, as against a tenant of real property holding over after the expiration of his term; and the cost of any such action or proceeding, if not paid by the occupant, shall also be a lien upon such premises, having the same preference as the lien of such judgment, and the right of the purchaser to such premises shall be extended for a longer term, which shall bear the same proportion to the original term as the amount of such costs bears to the amount paid by the purchaser on such sale. The term of the purchaser at any such sale shall commence when he shall have acquired possession of the premises sold. At any time within six months after recording such certificate, the owner of the premises or any lessee, mortgagee or incumbrancer thereof, or of any part of the same, may redeem the premises or any such part from such sale by paying to the purchaser the amount paid by him on the sale, and all costs and expenses incurred by him in any action or proceeding to recover possession with interest at the rate of ten per centum per annum thereon. If redemption is made by the owner, the

right of the purchaser shall be extinguished; if by a lessee, the amount paid shall be applied as a payment upon any rent due or which may accrue upon his lease; if by a mortgagee or an incumbrancer, the amount paid shall be added to his mortgage, incumbrance or other lien, or if he have more than one to the oldest, and shall thereafter be a part of such mortgage, lien or incumbrance and enforceable as such.

§ 33. Manufactures in tenement houses and dwellings.

No room or apartment in a tenement or dwelling house, used for eating or sleeping purposes, shall be used for the manufacture, wholly or partly, of coats, vests, trousers, knee pants, overalls, cloaks, shirts, purses, feathers, artificial flowers or cigars, except by the members of the family living therein, which shall include a husband and wife and their children, or the children of either. A family occupying or controlling such a workshop shall, within fourteen days from the time of beginning work therein, notify the board of health of the city, village or town, where such workshop is located, or a special inspector appointed by such board, of the location of such workshop, the nature of the work carried on, and the number of persons employed therein; and thereupon such board shall, if it deems advisable, cause a permit to be issued to such family to carry on the manufacture specified in the notice. Such board may appoint as many persons as it deems advisable to act as special inspectors. Such special inspectors shall receive no compensation, but may be paid by the board for their reasonable and necessary expenses. If a board of health or such inspector shall find evidence of infectious or contagious diseases present in any workshop, or in goods manufactured or in process of manufacture therein, the board shall issue such orders as the public health may require, and shall condemn and destroy such infectious and contagious articles, and may, if necessary to protect the public health, revoke any permit granted by it for manufacturing goods in such workshop. If a board of health or any such inspector shall discover that any such goods are being brought into the state, having been manufactured, in whole or in part, under unhealthy conditions, such board or inspector shall examine such goods, and if they are found to contain vermin, or to have been made in improper places or under unhealthy conditions, the board may make such orders as the public health may require, and may condemn and destroy such goods.

§ 34. Jurisdiction of town boards.

A town board of health shall not have jurisdiction over any city or incorporated village or part of such city or village in such town.

Amended by L. 1913, Ch. 559, in effect May 16, 1913.

§ 35. Expenses, how paid.

All expenses incurred by any local board of health in the performance of the duties imposed upon it or its members by law shall be a charge upon the municipality, and shall be audited, levied, collected and paid in the same manner as the other charges of, or upon, the municipality are audited, levied, collected and paid. The taxable property of any incorporated village shall not be subject to taxation for maintaining any town board of health, or for any expenditure authorized by the town board, but the costs and expenditures of the town board shall be assessed and collected exclusively on the property of the town outside of any such village.

Amended by L. 1913, Ch. 559, in effect May 16, 1913.

§ 36-a. Providing for the care and maintenance of carriers of disease.

Whenever an individual is declared by the state commissioner of health as being a carrier of typhoid fever bacilli and whenever, for the protection of the public health, the state commissioner of health shall have certified to the necessity of continued quarantine; or, whenever, in accordance with rules and regulations adopted by the state commissioner of health a carrier of the germs of typhoid fever is prevented from carrying on any occupation which

would enable him to gain a livelihood, such individual may be given hospital or institutional care under the surveillance of the local health officer at the expense of the state if such hospital or institution in the judgment of the state commissioner of health be properly equipped for the care and maintenance of said individual.

When no such hospital or institution is available and when in the opinion of the state commissioner of health such individual may be cared for at home or in a private family with due regard to the protection of the public health the local charities commissioner or overseer of the poor shall, in accordance with rules and regulations adopted by the commissioner of health, furnish necessary medical attendance and maintenance. No expenditure for the purposes herein authorized shall be contracted for or incurred by any local overseer of the poor or charities commissioner until after such expenditure has been authorized and approved by the state commissioner of health. A verified statement of any such approved expense incurred hereunder shall be transmitted by the local overseer of the poor or charities commissioner to the state commissioner of health. The commissioner of health shall examine this statement and if satisfied that such authorized expenses are correct and necessary in accordance with rules and regulations adopted by him he shall audit and allow the same and when so audited the amount thereof shall be paid by the state treasurer on the warrant of the comptroller to such institution or local poor officer.

Added by L. 1916, Ch. 371, in effect May 1, 1916.

§ 37. Mandamus.

The performance of any duty or the doing of any act enjoined, prescribed or required by this article, may be enforced by mandamus at the instance of the state department of health or its president or secretary, or of the local board of health, or of any citizen of full age resident of the municipality where the duty should be performed or the act done.

ARTICLE 5.

Potable Waters.

Section 70. Rules and regulations of department.

71. Inspection of water supply.
72. Rules and regulations for water supplies legalized.
73. Sewerage.
- 73-a. City of New York.
74. Discharge of sewage into Walkill creek prohibited.
75. Discharge of sewage into the Susquehanna near Binghamton prohibited.
76. Discharge of sewage and other matter into certain waters prohibited.
- 76-a. Order to discontinue pollution of waters.
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79. Plans for refuse discharge pipes must be submitted.
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81. Reports of municipal authorities to local boards of health.
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83. Record of permits; inspection of local boards of health.
84. Violations; service of notice; actions.
85. Penalties.
86. Construction and limitations made by section seventy-six to eighty-five inclusive.
87. Actions by municipalities to prevent discharge of sewage into waters.

§ 70. Rules and regulations of department.

The state department of health may make rules and regulations for the protection from contamination of any or all public supplies of potable waters and their sources within the state, and the commissioner of water supply, gas and electricity of the city of New York and the board of water supply of the city of New York may make such rules and regulations subject to the approval of the state department of health for the protection from contamination of any or all public supplies of potable waters and their sources within the state where the same constitute a part of the source of the public water supply of said city. If any such rule or regulation relates to a temporary source or act of contamination, any person violating such rule or regulation shall be liable to prosecution for misdemeanor for every such violation, and on conviction shall be punished by a fine not exceeding two hundred dollars, or imprisonment not exceeding one year, or both. If any such rule or regulation relates to a permanent source or act of contamination, said department may impose penalties for the violation thereof or the noncompliance therewith, not exceeding two hundred dollars for every such violation or noncompliance. Every such rule or regulation shall be published at least once in each week for six consecutive weeks, in at least one newspaper of the county where the waters to which it relates are located. The cost of such publication shall be paid by the corporation or municipality benefited by the protection of the water supply, to which the rule or regulation published relates. The affidavit of the printer, publisher or proprietor of the newspaper in which such rule or regulation is published may be filed, with the rule or regulation published, in the county clerk's office of such county, and such affidavit and rule and regulation shall be conclusive evidence of such publication, and of all the facts therein stated in all courts and places. (Amended by L. 1911, ch. 695 and L. 1915, ch. 665. In effect May 20, 1915.)

§ 71. Inspection of water.

The officer or board having by law the management and control of the potable water supply of any municipality, and in the city of New York, the commissioner of water supply, gas and electricity, and the board of water supply of the city of New York, or the corporation furnishing such supply, may make such inspection of the sources of such water supply as such officer, board or corporation deems advisable and to ascertain whether the rules or regulations of the state department and of the commissioner of water supply, gas and electricity of the city of New York, and of the board of water supply of the city of New York are complied with, and shall make such regular or special inspections as the state commissioner of health, or the commissioner of the department of water supply, gas and electricity of the city of New York, or the board of water supply of the city of New York, may prescribe. If any such inspection discloses a violation of any such rule or regulation relating to a temporary or permanent source or act of contamination, such officer, board or corporation shall cause a copy of the rule or regulation violated to be served upon the person violating the same, with a notice of such violation. If the person served does not immediately comply with the rule or regulation violated, such officer, board or corporation, except in a case concerning the violation of a rule or regulation relating to a temporary or permanent source or act of contamination affecting the potable water supply of the city of New

York, shall notify the state department of the violation, which shall immediately examine into such violation; and if such person is found by the state department to have actually violated such rule or regulation, the commissioner of health shall order the local board of health of such municipality wherein the violation of noncompliances occurs, to convene and enforce obedience to such rule or regulation. If the local board fails to enforce such order within ten days after its receipt, the corporation furnishing such water supply or the municipality deriving its water supply from the waters to which such rule or regulation relates, or the state commissioner of health or the local board of health of the municipality wherein the water supply protected by these rules is used, or any person interested in the protection of the purity of the water supply, may maintain an action in a court of record which shall be tried in the county where the cause of action arose against such person, for the recovery of the penalties incurred by such violation, and for an injunction restraining him from the continued violation of such rule or regulation. If the person served does not comply within five days with the rule or regulation violated, in case such rule or regulation relates to a temporary or permanent source or act of contamination affecting the potable water supply of the city of New York, the commissioner of water supply, gas and electricity of said city or the board of water supply of the city of New York may summarily enforce compliance with such rule or regulation, and may summarily abate or remove the cause of the violation of such rule or regulation or the nuisance so created, and to that end may employ such force as may be necessary and proper; provided, however, that no building or improvements shall be removed, disturbed or destroyed by the said commissioner of water supply or the said board of water supply until he or they shall cause measurements to be made of the buildings and photographs of the exterior views thereof, which measurements and photographs shall be at the disposition thereafter of the owners or their attorneys, and failure to exercise such right of abatement shall not be deemed a waiver thereof. Failure to comply within five days with such rule and regulation shall further entitle the city of New York to maintain an action in any court having jurisdiction thereof for the recovery of the penalties incurred by such violation and for an injunction restraining the person or persons violating such rule or regulation, or creating or continuing such nuisance, from the continued violation of such rule or regulation or continuance of such nuisance; the remedy by abatement being not exclusive. Amended by L. 1911, ch. 695 and L. 1915, ch. 665. In effect May 20, 1915.

§ 72. Rules and regulations for water supplies legalized.

All rules and regulations heretofore duly made and published for the sanitary protection of public water supplies, pursuant to chapter five hundred and forty-three of the laws of eighteen hundred and eighty-five, and chapter six hundred and sixty-one of the laws of eighteen hundred and ninety-three, as amended, are hereby legalized, ratified, confirmed and continued in force, until new rules and regulations become operative.

This section and the two preceding sections shall not be construed to repeal or affect any of the provisions of chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven, or its amendments.

§ 73. Sewerage.

When the state department of health, or the commissioner of water supply, gas and electricity of the city of New York, or the board of water supply of the city of New York, shall, for the protection of a water supply from contamination, make orders or regulations the execution of which will require or make necessary the construction and maintenance of any system of sewerage, or a change thereof, in or for any village or hamlet, whether incorporated or unincorporated, or the execution of which will require the providing of some public means of removal or purification of sewage, the municipality or corporation owning the water works benefited thereby shall, at its own expense, construct and maintain such system of sewage, or change thereof, and provide and maintain such means of removal and purification of sewage and such works or means of sewage disposal as shall be approved by the state department of health, and for that purpose said municipality or corporation may acquire, under the general condemnation law, the necessary real estate or interest therein whether now used for public or private purposes. When the execution of any such regulations of the state department of health, or the commissioner of water supply, gas and electricity of the city of New York or the board of water supply of the city of New York, will occasion or require the removal of any building or buildings, the municipality or corporation owning the water works benefited thereby shall, at its own expense, remove such buildings and pay to the owner thereof all damages occasioned by such removal. When the execution of any such regulation will injuriously affect any property the municipality or corporation owning the water works benefited thereby shall make just and adequate compensation for the property so taken or injured and for all injuries caused to the legitimate use or operation of such property. Until such construction or change of such system or systems of sewerage, and the providing of such means of removal or purification of sewage, and until such works or means of sewage disposal and the removal of any building are so made by the municipality or corporation owning the water works to be benefited thereby at its own expense, and until, except in the case of a municipality, the corporation owning the water works benefited shall make just and adequate payment for all injuries to property and for all injuries caused to the legitimate use or operation of such property, there shall be no action or proceeding taken by any such municipality, officer, board, person or corporation against any person or corporation for the violation of any regulation of the state department of health under this article, and no person or corporation shall be considered to have violated or refused to obey any such rule or regulation. The owner of any building the removal of which is occasioned or required, or which has been removed by any rule or regulation of the state department of health, or the commissioner of water supply, gas

and electricity of the city of New York, or the board of water supply of the city of New York, made under the provisions of this article, and all persons whose rights of property are injuriously affected by the enforcement of any such rule or regulation, shall have a cause of action against the municipality or corporation owning the water works benefited by the enforcement of such rule or regulation, for all damages occasioned or sustained by such removal or enforcement, including all injuries caused to the legitimate use or operation of such property, and an action therefor may be brought against such municipality or corporation in any court of record in the county in which the premises or property affected is situated and shall be tried therein; or such damage may be determined by a special proceeding in the supreme court or the county court of the county in which the property is situated. Such special proceedings shall be commenced by petition and notice to be served by such owner upon the municipality or corporation in the same manner as for the commencement of condemnation proceedings. Such municipality or corporation may make and serve an answer to such petition as in condemnation proceedings. The petition and answer shall set forth the claims of the respective parties, and the provisions of the condemnation law shall be applicable to the subsequent proceedings upon the petition and answer, if any. Either party may, before the service of the petition or answer respectively, offer to take or pay a certain sum, and no costs shall be awarded against either party unless the judgment is more unfavorable to him than his offer. Provided, however, that in the case of a summary abatement by a municipality as hereinbefore provided, no costs shall be awarded against the owner of the property damaged, and the commissioners of appraisal in their report shall recommend such additional sum as may in their judgment be reasonable as compensation for witnesses and other necessary expenses of claimant. Such municipality shall, within three calendar months after the confirmation of the report of the commissioners of appraisal, pay to the respective owners and bodies politic or corporate, mentioned or referred to in said report, in whose favor any sum or sums of money shall be estimated and reported by said commissioners, the respective sum or sums so estimated and reported in their favor respectively, with lawful interest thereon. And in case of neglect or default in the payment of the same within the time aforesaid, the respective person or persons or bodies politic or corporate in whose favor the same shall be so reported, his, her, or their executors, administrators or successors, at any time or times, after application first made by him, her, or them to such municipality for payment thereof, may sue for and recover the same, with lawful interest as aforesaid, and the costs of suit in any proper form of action against such municipality in any court having cognizance thereof, and it shall be sufficient to declare generally for so much money due to the plaintiff or plaintiffs therein by virtue of this act, and the report of said commissioners, with proof of the right and title of the plaintiff or plaintiffs to the sum or sums demanded shall be conclusive evidence in such suit or action. Amended by L. 1911, ch. 695, and L. 1915, ch. 665. In effect May 20, 1915.

§ 73-a. Nothing contained in this chapter shall extend the sanitary control of the board of water supply of the city of New York, beyond the sources of potable water supply, tributary to the Catskill aqueduct; and the powers granted by this chapter to the board of water supply of the city of New York shall cease at the time of the transference of the jurisdiction over the source of water supply, by the board of water supply to the commissioner of water supply, gas and electricity of the city of New York; and at no time shall the commissioner of water supply, gas and electricity of the city of New York and the board of water supply of said city have or exercise concurrent powers or sanitary control over the sources of potable water supply tributary to the Catskill aqueduct.

Added by L. 1915, ch. 665. In effect May 20, 1915.

§ 74. Discharge of sewage into Wallkill creek prohibited.

No person or corporation shall permit the discharge or escape of any sewage, or other matter deleterious to public health, or destructive to fish, or throw or cast any dead animal, carrion or offal, or other putrid or offensive matter into the waters of the Wallkill creek, in the counties of Ulster and Orange. Any person violating any provision of this section shall forfeit to the county where the violation occurred the sum of fifty dollars for every such violation.

§ 75. Discharge of sewage into the Susquehanna near Binghamton prohibited.

No person or corporation shall cause to fall, flow or discharge into the Susquehanna river or any of its tributaries, between the Rock Bottom dam in such river at the city of Binghamton, and a point one mile east of the bridge that crosses such river at Conklin, any sewage matter, or other foul, noxious or deleterious, solid or liquid matter, or any matter that may be declared such by the board of health of any municipality adjacent to such river within such limit. The board of health of any such municipality shall examine into any alleged offense against this section and cause the same to be abated, if found to exist. Every person violating any provision of this section shall forfeit to the municipality having a local board of health where the violation occurs the sum of twenty-five dollars for the first day when the violation takes place, and the sum of ten dollars for every subsequent day that such violation is repeated or continued.

§ 76. Discharge of sewage and other matter into certain waters prohibited.

No person, corporation or municipality, shall place or cause to be placed, or discharge or cause to be discharged into any of the waters of this state, in quantities injurious to the public health, any sewage, garbage, offal, or any decomposable or putrescible matter of any kind or the effluent from any sewage disposal plant, or any substance, chemical or otherwise, or any refuse or waste matter, either solid or liquid, from any sewer or drainage system, or from any shop, factory, mill or industrial establishment; unless express permission to do so shall have been first given in writing by the state commissioner of health as provided in this article, except as hereinafter provided. But this section shall not prevent the discharge of sewage from any public sewer system owned and maintained by a municipality until an order prohibiting same shall be made as hereinafter provided, or the discharge of refuse or waste matter from any shop, factory, mill or industrial establishment, if such sewer system was in operation and was discharging sewage, or such shop, factory, mill or industrial establishment was in operation and discharging refuse or waste matter, into any of the waters of this state on or prior to May seventh, nineteen hundred and three, and such municipality or the proprietor of such shop, factory, mill or industrial establishment

secured exemption from this section by filing a report with the state commissioner of health in accordance with law, nor to any extension or modification of such shop, factory, mill or industrial establishment, or reconstruction thereof, provided the refuse or waste matter discharged therefrom is not materially changed or increased; but this exception shall not permit any increase in the discharge of such sewage, or in the discharge of refuse or waste matter from any shop, factory, mill or industrial establishment, nor shall it permit the discharge of sewage from a sewer system which shall be extended, modified or reconstructed subsequent to said date. (Amended by L. 1911, ch. 553. In effect June 30, 1911.)

§ 76-a. Order to discontinue pollution of waters.

Whenever the state commissioner of health shall determine upon investigation that sewage from any city, village, town, building, steamboat or other vessel, or property, or any garbage, offal or any decomposable or putrescible matter of any kind is being discharged into any of the waters of the state, which shall include all streams and springs and all bodies of surface and ground water, whether natural or artificial, within or upon the boundaries of the state, and when, in the opinion of the state commissioner of health, such discharge is polluting such waters in a manner injurious to, or so as to create a menace to health, or so as to create a public nuisance, he may order the municipality, corporation or person so discharging sewage, refuse or other matter to show cause before him why such discharge should not be discontinued. A notice shall be served on the municipality, corporation or person so discharging sewage, refuse or other matter, directing such municipality, corporation or person to show cause before the said state commissioner of health on a date specified in such notice why an order should not be made directing the discontinuance of such discharge. Such notice shall specify the time when and place where a public hearing will be held by the state commissioner of health and notice of such hearing shall be published at least twice in a newspaper of the city, village, town or county where such discharge occurs, and shall be served personally or by mail at least fifteen days before said hearing and in the case of a municipality or a corporation such service shall be upon an officer thereof. The state commissioner of health shall take evidence in regard to said matter and he may issue an order to the municipality, corporation or person responsible for such discharge, directing that within a specified period of time thereafter such discharge be discontinued, and such proper method of treatment or disposal of such sewage, refuse or waste matter be adopted as will permanently obviate such pollution of said waters by the municipality, corporation or person responsible therefor and as shall be approved by said commissioner. Such order shall not be valid until approved by the governor and the attorney-general, and when so approved it shall be the duty of the attorney-general to enforce such order. Such means or method for the treatment or disposal of sewage, refuse or other matter must be executed, completed and put in

operation within the time fixed in the order. The state commissioner of health shall have authority to require from the officials and persons responsible for the execution of such orders satisfactory evidence at specified times of proper progress in the execution of such orders, and may stipulate and require that certain definite progress shall be made at certain definite times prior to the final date fixed in the order. For the purposes of this article sewage shall be defined as any substance, solid or liquid that contains any of the waste products or excrementitious or other wastes or washings from the bodies of human beings or animals. But this section shall not apply to refuse or waste matter from any shop, factory, mill or industrial establishment not containing sewage as hereinbefore defined. (Added by L. 1911, ch. 553. In effect June 30, 1911.)

§ 77. Permission to discharge sewage.

Upon application duly made to the state commissioner of health by the public authorities having by law the charge of the sewer system of any municipality, the state commissioner of health shall have power to consider the case of a sewer system otherwise prohibited by section seventy-six from discharging sewage into any of the waters of the state, and whenever in his opinion the general interests of the public health would not be endangered thereby he may issue a permit for the discharge of sewage from any such sewer system into any of the waters of the state, and may stipulate in the permit, modifications, regulations and conditions on which such discharge may be permitted. Such application must be made in a form required by the state commissioner of health and he may require such plans and information to be furnished him as he deems advisable. The plans for the construction of any sewer system or sewage disposal plant or for the extension, reconstruction or modification of sewers, sewer systems or sewage disposal plants shall be so submitted with application for their approval, and a permit as herein provided. Such permit before being operative shall be recorded in the county clerk's office of the county wherein the outlet of the said sewer system is located, and a copy of the permit shall be transmitted by the state commissioner of health to the board of health of the municipality wherein the outlet of said sewer system is located. (Amended by L. 1911, ch. 553. In effect June 30, 1911.)

§ 78. Permission to discharge refuse or waste matter from industrial establishments.

Upon application duly made to the state commissioner of health by the proprietor, lessee or tenant of any shop, factory, mill or industrial establishment from which the discharge of refuse or waste matter into any of the waters of the state is otherwise prohibited by section seventy-six, the state commissioner of health shall have power to consider the case of the said shop, factory, mill or industrial establishment, and whenever the public health and purity of the waters shall warrant it, he shall issue a permit for the discharge of refuse or waste matter from such shop, factory, mill or industrial establishment into any of the waters of the state, and may stipulate in the permit such modifications, regulations and conditions as the public health may require. Such permit before being operative shall be recorded in the county clerk's office of the county where such shop, factory, mill or industrial establishment is located and a copy of such permit shall be transmitted by the state commissioner of health to the board of health of the municipality wherein the outlet discharging refuse or waste matter from such shop, factory, mill or industrial establishment shall be located.

§ 79. Plans for refuse discharge pipes must be submitted.

Before any conduit or discharge pipe, or other means of discharging or casting any refuse or waste matter from any shop, factory, mill or industrial establishment not constructed or in process of construction on May seventh, nineteen hundred and three, shall be put in or constructed for the purpose of discharging any refuse or waste matter therefrom into any waters in this state, the plan or plans therefor, together with a statement of the purpose for which the same is to be used, shall be submitted to the commissioner. If the same is not detrimental to the public health he shall issue a permit therefor to the applicant. No such conduit, discharge pipe or other means of discharging or casting any refuse or waste matter from any such shop, factory, mill or establishment into any of the waters of this state shall be put in or constructed before such permit is granted, and if put in or constructed, the person putting in or constructing or maintaining the same shall forfeit to the people of the state five dollars a day for each day the same is used or maintained for such purpose, to be collected in an action brought by the commissioner. He may also maintain an action in the name of the people to restrain a violation of this section.

§ 80. Revocation of permit.

Every such permit for the discharge of sewage from a sewer system or for the discharge of refuse or waste matter from a shop, factory, mill or industrial establishment, shall when necessary to conserve the public health, be revocable or subject to modification or change by the state commissioner of health on due notice after an investigation and hearing and an opportunity for all interested therein to be heard thereon being served on the public authorities of the municipality owning and maintaining the sewer system, or on the proprietor, lessee or tenant of the shop, factory, mill or industrial establishment. The length of the time after receipt of the notice within which the discharge of sewage or of refuse or waste matter shall be discontinued may be stated in the permit, but in no case shall it exceed two years in the case of a sewer system, or one year in the case of a shop, factory, mill or industrial establishment, and if the length of time is not specified in the permit, it shall be one year in the case of a sewer system and six months in the case of a shop, factory, mill or industrial establishment. On the expiration of the period of time prescribed after the service of a notice of revocation, modification or change from the state commissioner of health, the right to discharge sewage or refuse or waste matter into any of the waters of the state shall cease and terminate and the prohibition of section seventy-six of this article against such discharge shall be in full force as though no permit had been granted, but a new permit may thereafter again be granted as hereinbefore provided.

§ 81. Reports of municipal authorities to local boards of health.

The report of the public authorities having by law charge of the sewer system of every municipality in the state, from which sewer system sewage was being discharged into any of the waters of the state on May seventh, nineteen hundred and three, transmitted by the board of health of the municipality within which any sewer outlet of the said sewer system is located to the state commissioner of health and filed by him in his office, shall constitute the evidence of exemption from the prohibition of section

seventy-six of this article. No sewer system shall be exempt from the prohibition of said section against the discharge of sewage into the waters of the state for which a satisfactory report shall not have been filed in the office of the state commissioner of health in accordance with laws of nineteen hundred and three, chapter four hundred and sixty-eight.

§ 82. Reports of proprietors of industrial establishments.

The report of the proprietor of every shop, factory, mill and industrial establishment in the state, from which refuse or waste matter was being discharged into any of the waters of the state on May seventh, nineteen hundred and three, filed in the office of the state commissioner of health shall constitute the evidence of exemption of the shop, factory, mill or industrial establishment from the prohibition of section seventy-six of this article. No shop, factory, mill or industrial establishment shall be exempt from the prohibition of said section against the discharge of refuse or waste matter into the waters of the state, for which a report shall not have been made in accordance with laws of nineteen hundred and three, chapter four hundred and sixty-eight.

§ 83. Record of permits; inspection of local boards of health.

Each board of health shall preserve in its office and in a form to be prescribed by the state commissioner of health, a permanent record of each permit issued by the state commissioner of health granting the right to discharge sewage or refuse or waste matter into any of the waters of the state within that municipality and of each revocation of a permit; and also a permanent record of each report received by the board of health concerning each sewer system and each shop, factory, mill or industrial establishment which on May seventh, nineteen hundred and three, was discharging sewage or refuse or waste matter into any of the waters of the state within that municipality. Each local board of health shall make and maintain such inspection as will, at all times, enable it to determine whether section seventy-six of this article is being complied with in respect to the discharge of sewage, refuse or waste matter or other materials prohibited by said section, into any of the waters of the state within that municipality. For the purpose of such inspection every member of such board of health, or its health officers, or any person duly authorized by it, shall have the right to make all necessary examinations of any premises, building, shop, factory, mill, industrial establishment, process or sewer system.

§ 84. Violations; service of notice; actions.

The local board of health of each municipality shall promptly ascertain every violation of, or noncompliance with, any of the provisions of section seventy-six of this article or of the permits for the discharge of sewage or refuse or waste material into any of the waters of the state herein provided, which may occur within that municipality, or the state commissioner of health may ascertain such violations or noncompliance. The local board of health shall on the discovery of every violation of or noncompliance with any of the provisions of said section or of any permit duly issued, report

the same in writing to the said commissioner of health. Upon such report from a local board of health or upon ascertaining such violation or non-compliance, the state commissioner shall at once give a hearing to and take the proof of persons charged with such violation or noncompliance and investigate the matter, and if he finds a violation or noncompliance to exist he may bring an action in the name of the people of the state in a court of record against the person or corporation responsible for the violation or noncompliance, for the recovery of the penalties incurred and for an injunction against the continuation of the violation or noncompliance. (Amended by L. 1911, ch. 553. In effect June 30, 1911.)

§ 85. Penalties.

The penalty for the discharge of sewage from any public sewer system into any of the waters of the state without a duly issued permit for which a permit is required by this article shall be five hundred dollars, and a further penalty of fifty dollars per day for each day the offense is maintained. The penalty for the discharge of sewage from any public sewer into any of the waters of the state without filing a report for which a report is required to be filed with the board of health of the municipality shall be fifty dollars. The penalty for the discharge of refuse or waste matter from any shop, factory, mill or industrial establishment for which a permit is required by this article, without such permit shall be one hundred dollars and ten dollars per day for each day the offense is maintained. The penalty for the discharge of refuse or waste matter from any shop, mill, factory or industrial establishment, without filing a report where a report is required by this article to be filed shall be twenty-five dollars and five dollars per day for each day the offense is maintained. The penalty for discharging into any of the waters of the state any other matter prohibited by section seventy-six of this article, besides that specified above, shall be twenty-five dollars and five dollars per day for each day the offense is maintained.

§ 86. Constructions and limitations made by sections seventy-six to eighty-five, inclusive.

Nothing in sections seventy-six to eighty-five inclusive shall be construed to diminish or otherwise to modify the common law rights of riparian owners in the quality of waters of streams covered by such rights, nor in the case of actions brought against the pollution of waters to limit their remedy to indemnities.

§ 87. Actions by municipalities to prevent discharge of sewage into waters.

Any incorporated city or village in the state of New York, which has made such provision for the disposal of its sewage as not to pollute or contaminate therewith any river, stream, lake or other body of water, may have and maintain an action in the supreme court to prevent the discharge of any sewage or substance deleterious to health, or which shall injure the potable qualities of the water in any river, stream, lake or other body of water, from which such incorporated city or village shall take or receive

secured exemption from this section by filing a report with the state commissioner of health in accordance with law, nor to any extension or modification of such shop, factory, mill or industrial establishment, or reconstruction thereof, provided the refuse or waste matter discharged therefrom is not materially changed or increased; but this exception shall not permit any increase in the discharge of such sewage, or in the discharge of refuse or waste matter from any shop, factory, mill or industrial establishment, nor shall it permit the discharge of sewage from a sewer system which shall be extended, modified or reconstructed subsequent to said date. (Amended by L. 1911, ch. 553. In effect June 30, 1911.)

§ 76-a. Order to discontinue pollution of waters.

Whenever the state commissioner of health shall determine upon investigation that sewage from any city, village, town, building, steamboat or other vessel, or property, or any garbage, offal or any decomposable or putrescible matter of any kind is being discharged into any of the waters of the state, which shall include all streams and springs and all bodies of surface and ground water, whether natural or artificial, within or upon the boundaries of the state, and when, in the opinion of the state commissioner of health, such discharge is polluting such waters in a manner injurious to, or so as to create a menace to health, or so as to create a public nuisance, he may order the municipality, corporation or person so discharging sewage, refuse or other matter to show cause before him why such discharge should not be discontinued. A notice shall be served on the municipality, corporation or person so discharging sewage, refuse or other matter, directing such municipality, corporation or person to show cause before the said state commissioner of health on a date specified in such notice why an order should not be made directing the discontinuance of such discharge. Such notice shall specify the time when and place where a public hearing will be held by the state commissioner of health and notice of such hearing shall be published at least twice in a newspaper of the city, village, town or county where such discharge occurs, and shall be served personally or by mail at least fifteen days before said hearing and in the case of a municipality or a corporation such service shall be upon an officer thereof. The state commissioner of health shall take evidence in regard to said matter and he may issue an order to the municipality, corporation or person responsible for such discharge, directing that within a specified period of time thereafter such discharge be discontinued, and such proper method of treatment or disposal of such sewage, refuse or waste matter be adopted as will permanently obviate such pollution of said waters by the municipality, corporation or person responsible therefor and as shall be approved by said commissioner. Such order shall not be valid until approved by the governor and the attorney-general, and when so approved it shall be the duty of the attorney-general to enforce such order. Such means or method for the treatment or disposal of sewage, refuse or other matter must be executed, completed and put in

operation within the time fixed in the order. The state commissioner of health shall have authority to require from the officials and persons responsible for the execution of such orders satisfactory evidence at specified times of proper progress in the execution of such orders, and may stipulate and require that certain definite progress shall be made at certain definite times prior to the final date fixed in the order. For the purposes of this article sewage shall be defined as any substance, solid or liquid that contains any of the waste products or excrementitious or other wastes or washings from the bodies of human beings or animals. But this section shall not apply to refuse or waste matter from any shop, factory, mill or industrial establishment not containing sewage as hereinbefore defined. (Added by L. 1911, ch. 553. In effect June 30, 1911.)

§ 77. Permission to discharge sewage.

Upon application duly made to the state commissioner of health by the public authorities having by law the charge of the sewer system of any municipality, the state commissioner of health shall have power to consider the case of a sewer system otherwise prohibited by section seventy-six from discharging sewage into any of the waters of the state, and whenever in his opinion the general interests of the public health would not be endangered thereby he may issue a permit for the discharge of sewage from any such sewer system into any of the waters of the state, and may stipulate in the permit, modifications, regulations and conditions on which such discharge may be permitted. Such application must be made in a form required by the state commissioner of health and he may require such plans and information to be furnished him as he deems advisable. The plans for the construction of any sewer system or sewage disposal plant or for the extension, reconstruction or modification of sewers, sewer systems or sewage disposal plants shall be so submitted with application for their approval, and a permit as herein provided. Such permit before being operative shall be recorded in the county clerk's office of the county wherein the outlet of the said sewer system is located, and a copy of the permit shall be transmitted by the state commissioner of health to the board of health of the municipality wherein the outlet of said sewer system is located. (Amended by L. 1911, ch. 553. In effect June 30, 1911.)

seventy-six of this article. No sewer system shall be exempt from the prohibition of said section against the discharge of sewage into the waters of the state for which a satisfactory report shall not have been filed in the office of the state commissioner of health in accordance with laws of nineteen hundred and three, chapter four hundred and sixty-eight.

§ 82. Reports of proprietors of industrial establishments.

The report of the proprietor of every shop, factory, mill and industrial establishment in the state, from which refuse or waste matter was being discharged into any of the waters of the state on May seventh, nineteen hundred and three, filed in the office of the state commissioner of health shall constitute the evidence of exemption of the shop, factory, mill or industrial establishment from the prohibition of section seventy-six of this article. No shop, factory, mill or industrial establishment shall be exempt from the prohibition of said section against the discharge of refuse or waste matter into the waters of the state, for which a report shall not have been made in accordance with laws of nineteen hundred and three, chapter four hundred and sixty-eight.

§ 83. Record of permits; inspection of local boards of health.

Each board of health shall preserve in its office and in a form to be prescribed by the state commissioner of health, a permanent record of each permit issued by the state commissioner of health granting the right to discharge sewage or refuse or waste matter into any of the waters of the state within that municipality and of each revocation of a permit; and also a permanent record of each report received by the board of health concerning each sewer system and each shop, factory, mill or industrial establishment which on May seventh, nineteen hundred and three, was discharging sewage or refuse or waste matter into any of the waters of the state within that municipality. Each local board of health shall make and maintain such inspection as will, at all times, enable it to determine whether section seventy-six of this article is being complied with in respect to the discharge of sewage, refuse or waste matter or other materials prohibited by said section, into any of the waters of the state within that municipality. For the purpose of such inspection every member of such board of health, or its health officers, or any person duly authorized by it, shall have the right to make all necessary examinations of any premises, building, shop, factory, mill, industrial establishment, process or sewer system.

§ 84. Violations; service of notice; actions.

The local board of health of each municipality shall promptly ascertain every violation of, or noncompliance with, any of the provisions of section seventy-six of this article or of the permits for the discharge of sewage or refuse or waste material into any of the waters of the state herein provided, which may occur within that municipality, or the state commissioner of health may ascertain such violations or noncompliance. The local board of health shall on the discovery of every violation of or noncompliance with any of the provisions of said section or of any permit duly issued, report

the same in writing to the said commissioner of health. Upon such report from a local board of health or upon ascertaining such violation or non-compliance, the state commissioner shall at once give a hearing to and take the proof of persons charged with such violation or noncompliance and investigate the matter, and if he finds a violation or noncompliance to exist he may bring an action in the name of the people of the state in a court of record against the person or corporation responsible for the violation or noncompliance, for the recovery of the penalties incurred and for an injunction against the continuation of the violation or noncompliance. (Amended by L. 1911, ch. 553. In effect June 30, 1911.)

§ 85. Penalties.

The penalty for the discharge of sewage from any public sewer system into any of the waters of the state without a duly issued permit for which a permit is required by this article shall be five hundred dollars, and a further penalty of fifty dollars per day for each day the offense is maintained. The penalty for the discharge of sewage from any public sewer into any of the waters of the state without filing a report for which a report is required to be filed with the board of health of the municipality shall be fifty dollars. The penalty for the discharge of refuse or waste matter from any shop, factory, mill or industrial establishment for which a permit is required by this article, without such permit shall be one hundred dollars and ten dollars per day for each day the offense is maintained. The penalty for the discharge of refuse or waste matter from any shop, mill, factory or industrial establishment, without filing a report where a report is required by this article to be filed shall be twenty-five dollars and five dollars per day for each day the offense is maintained. The penalty for discharging into any of the waters of the state any other matter prohibited by section seventy-six of this article, besides that specified above, shall be twenty-five dollars and five dollars per day for each day the offense is maintained.

§ 86. Constructions and limitations made by sections seventy-six to eighty-five, inclusive.

Nothing in sections seventy-six to eighty-five inclusive shall be construed to diminish or otherwise to modify the common law rights of riparian owners in the quality of waters of streams covered by such rights, nor in the case of actions brought against the pollution of waters to limit their remedy to indemnities.

§ 87. Actions by municipalities to prevent discharge of sewage into waters.

Any incorporated city or village in the state of New York, which has made such provision for the disposal of its sewage as not to pollute or contaminate therewith any river, stream, lake or other body of water, may have and maintain an action in the supreme court to prevent the discharge of any sewage or substance deleterious to health, or which shall injure the potable qualities of the water in any river, stream, lake or other body of water, from which such incorporated city or village shall take or receive

its water supply, provided that such river, stream, lake or other body of water is wholly, or in part, within the boundaries of the county in which such plaintiff is located. Whenever such action shall be brought under the provisions of this section, it shall be the duty of the supreme court upon proof of the existence of facts justifying the bringing and maintenance of such action under the provisions of this section to render a judgment in which shall be incorporated a mandatory injunction requiring the person, body, board, corporation, municipality, village, county or town, being a defendant to said action which directly or indirectly, or by its servants, agents or officers shall discharge or dispose of its sewage, or any other substance deleterious to health or which shall injure the potable qualities of the water in such wise as that the same shall enter into any river, stream, lake or other body of water, from which such plaintiff shall take or receive its water supply, within such reasonable time as may be prescribed by the court, to take such action as shall prevent such discharge or the disposal of such sewage or other substance into such waters, or the pollution thereof, with such further directions in the premises as may be proper and desirable to effect such purpose, provided that such river, streams, lake or other body of water is wholly, or in part, within the boundaries of the county in which such plaintiff is located. But no such action shall be brought as provided for in this section until the state department of health has examined and determined whether the sewage does pollute or contaminate the river, stream, lake or other body of water into which said sewage is discharged. The expense of such examination by said department shall be a charge upon and paid by the municipality in whose interest, and on whose behalf such examination is made. In case the state department of health shall find upon examination that the discharge of said sewage does pollute or contaminate said waters or any of them in such manner as to be of menace or danger to the health of those using said waters, the plans for the removal or disposal of the sewage ordered to be prepared by the court as provided in this section shall be submitted to the state department of health for its approval.

ARTICLE 17-B.¹

Regulation of Certain Contagious Diseases.

Section 343-m. Suspected persons.

343-n. Convicted persons.

343-o. Treatment required.

343-p. Free treatment for indigent persons.

343-q. Treatment only by physicians or on their prescriptions.

343-r. Reports and information confidential.

343-s. Penalties.

343-t. Definitions.

§ 343-m. Suspected persons.

Whenever the board of health or health officer of a health district shall have reasonable ground to believe that any person within the jurisdiction of such board or health officer is suffering from, or infected with, any infectious

¹ Added by L. 1918, ch. 264, in effect April 17, 1918.

venereal disease and is likely to infect or to be the source of infection of any other person, such board of health or health officer shall cause a medical examination to be made of such person, for the purpose of ascertaining whether or not such person is in fact suffering from, or infected with, such disease, and every such person shall submit to such examination and permit such specimens of blood or bodily discharges to be taken for laboratory examinations as may be necessary to establish the presence or absence of such disease or infection, provided, that the required examination shall be made by the health officer, or, at the option of the person to be examined, by a licensed physician who, in the opinion of the health officer, is qualified for this work and is approved by him, and such licensed physician making such examination shall report thereon to the board of health, health department or health officer, but shall not issue a certificate of freedom from venereal disease to or for the person examined. Such suspected person may apply to a magistrate for an order restraining such examination and no examination shall then be made except upon order of such magistrate. Before such examination each suspected person shall be informed of this right and be given an opportunity to avail himself or herself thereof.

§ 343-n. Convicted persons.

Every person convicted of vagrancy under subdivision three or four of section eight hundred and eighty-seven of the code of criminal procedure or under section one hundred and fifty of the tenement house law or under any statute or ordinance for any offense of the nature specified in subdivision four of section eight hundred and eighty-seven of the code of criminal procedure, or any person convicted of frequenting disorderly houses or houses of prostitution, shall be reported by the court or magistrate before whom such conviction is had to the board of health or health officer of the health district in which the offense occurred, and shall not be released from the jurisdiction of such court or magistrate until the person so convicted has been examined as provided for in the preceding section.

§ 343-o. Treatment required.

Every person who, by the examination as provided for in section three hundred and forty-three-m, is found to be suffering from, or infected with any infectious venereal disease, shall be required by the board of health, or the health officer of the district in which such person resides, to conform to all the rules and regulations made and approved by such board of health or health officer for persons so diseased, such rules and regulations, except as to the city of New York, to be first approved by the state department of health. Such rules and regulations shall provide that such person shall submit to a prescribed course of treatment by a duly licensed physician, engaged by the infected person, who has been approved by such board of health, health officer or the state department of health. Such rules and regulations may provide for the isolation and treatment of persons so infected and the local board or health officer shall in that case define the place and limits of the area within which such person shall be isolated, and the conditions under which such isolation and treatment shall be terminated. Any of such rules and regulations

may be reviewed in the courts and tested as to reasonableness in a proceeding instituted by any person directed to conform therewith pursuant to this article.

§ 343-p. Free treatment for indigent persons.

Any person who is suffering from a venereal disease in an infectious stage and who is unable to pay for treatment may make application for care and treatment to the board of health of the health district in which such person resides and such board shall promptly institute treatment. If such board or health officer after investigation finds that such person is in fact unable to pay for such treatment, such treatment shall be continued for such person without cost at the expense of the said district.

§ 343-q. Treatment only by physicians or on their prescriptions.

No person, other than a licensed physician, shall treat or prescribe for a case of venereal disease, or dispense a drug, medicine or remedy for the treatment of such a disease except on prescription of a duly licensed physician. Such prescription shall be retained by the person dispensing such drug, medicine or remedy, and no copy of such prescription shall be made by or delivered to any person, and such prescription shall be filled but once.

§ 343-r. Reports and information confidential.

All reports or information secured by a board of health or health officer under the provisions of this article shall be absolutely confidential except in so far as is necessary to carry out the purposes of the article.

§ 343-s. Penalties.

Any person who shall violate any of the provisions of this article or any rule or regulation made and approved under the provisions of section three hundred and forty-three-o shall be guilty of a misdemeanor. Any person who, knowing himself or herself to be infected with venereal disease, such as chancre, gonorrhea or syphilis, in any of the variations or stages of such diseases, has sexual intercourse with a person in the military or naval service of the state or of the United States shall be guilty of a felony.

§ 343-t. Definitions.

The term "health district" as used in this article shall mean a city, town, village or consolidated health district having a separate board of health.

ARTICLE 20.*

Vital Statistics.

Section 370. Registration of births and deaths; duties of state department of health.

- 371. Duties of state commissioner of health as to vital statistics.
- 372. Registration districts.
- 373. Registrar of vital statistics.
- 374. Correction of defective registration.
- 375. Permits for burial or removal of dead bodies.
- 376. Registration of stillborn children.
- 377. Certificate of death.
- 378. Registration of deaths occurring without medical attendance.
- 379. Duties of undertakers.
- 380. Duties of undertakers; interment within the state.
- 381. Interments.
- 382. Registration of births.
- 383. Certificate of birth.
- 384. Registration of name of child subsequent to filing of birth certificate.
- 385. Registration of physicians, midwives and undertakers.
- 386. Registration of persons in institutions.
- 387. Records to be kept by state commissioner of health.
- 388. Certified copies of birth certificates evidence of age.
- 389. District records to be kept by registrar.
- 390. Fees of registrar for the prompt and correct return and filing of birth and death certificates.
- 391. Certified copies of records; state commissioner of health to furnish.
- 392. Penalties.
- 393. Enforcement.
- 394. Exemptions.

§ 370. Registration of births and deaths; duties of state department of health.

The state department of health shall have charge of the registration of births and deaths, shall provide the necessary instructions, forms and blanks for obtaining and preserving such records, and shall procure the faithful registration of the same in each primary registration district as constituted by this article and in the division of vital statistics at the capital of the state. The said department shall be charged with the uniform and thorough enforcement of this article throughout the state and shall from time to time recommend any additional legislation that may be necessary for this purpose. The public health council may establish such rules and regulations supplementary to the provisions of this article and not inconsistent therewith, as it may deem necessary from time to time, in relation to the registration

* Entire article new. Added by L. 1913, ch. 619. In effect January 1, 1914. Another article 20 following was also added by L. 1913, ch. 630.

of births and deaths. Such rules and regulations shall be observed by all authorities upon whom duties are imposed by this article in connection with the registration of births and deaths.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 371. Duties of state commissioner of health as to vital statistics.

The state commissioner of health shall have general supervision of the division of vital statistics which shall be established by the department of health, and which shall be under the immediate direction of a director to be appointed by the commissioner, who shall possess such qualifications as may be prescribed by the public health council. The state commissioner of health shall detail to the division of vital statistics such clerical and other assistants as may be necessary to carry into effect the provisions of this act. The trustees of public buildings shall provide suitable offices in the capitol or elsewhere for the division of vital statistics, which shall be suitably equipped for the permanent and safe preservation of all records received or made under the provisions of this act.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 372. Registration districts.

The state shall be divided into registration districts as follows: Each city, each incorporated village, each town, and each state hospital, charitable or penal institution, shall constitute a primary registration district, provided that the state commissioner of health may combine two or more primary registration districts or divide one registration district into two or more primary districts to facilitate registration.

Added by L. 1913, ch. 619, and amended by L. 1917, Ch. 321, in effect May 2, 1917.

§ 373. Registrar of vital statistics.

In each primary registration district there shall be a registrar of vital statistics. Qualifications of registrars of vital statistics hereafter appointed shall be prescribed by the public health council. A local health officer shall be eligible for appointment as registrar of vital statistics and if so appointed and if receiving a salary equivalent to not less than fifteen cents per year per inhabitant of such registration district, he shall serve as registrar of vital statistics without additional remuneration therefor. In towns and villages the registrar or registrars of vital statistics shall be appointed by the town board and by the village board of trustees respectively; in the cities, unless otherwise provided by the charter, the registrar or registrars of vital statistics shall be appointed by the mayor. In each primary registration district consisting of a state hospital, charitable or penal institution, the registrar shall be the superintendent or person in charge of such institution, provided, however, that he shall receive no additional remuneration for acting as such registrar. The term of office of a registrar of vital statistics, unless the charter of the city or village shall provide otherwise, shall be four years. Each registrar of vital statistics shall hold office until his successor shall have been appointed and shall have qualified. Any registrar of vital statistics who in the judgment of the state commissioner of health fails or neglects to discharge efficiently the duties of his office as set forth in this article, or to make prompt and complete return of births and deaths as required thereby, shall be forthwith removed by the state commissioner of health, and such other penalties may be imposed as are provided by this article. Each registrar of vital statistics shall immediately upon his acceptance of appointment as such, appoint a deputy whose duty it shall be to act in his stead in case of his absence or inability, and such deputy shall in writing accept such appointment and be subject to all rules and regulations gov-

erning registrars. When it appears necessary for the convenience of the people in any rural district, the registrar is authorized, with the approval of the state commissioner of health, to appoint one or more suitable persons to act as sub-registrars, who shall be authorized to receive birth and death certificates and to issue burial or removal permits in and for such portions of the district as may be designated, and each such sub-registrar shall note on each certificate over his signature the date of filing and shall forward all certificates to the local registrar of the district within three days, and in all cases before the third day of the following month; provided, however, that each sub-registrar shall be subject to the supervision and control of the state commissioner of health and may be by him removed for neglect or failure to perform his duty in accordance with the provisions of this act or the regulations of the public health council, and shall be subject to the same penalties for neglect of duty as the local registrar.

Added by L. 1913, Ch. 619, and amended by L. 1917, Ch. 321, in effect May 2, 1917.

§ 374. Correction of defective registration.

If defects be found in the registration under the supervision of a registrar of vital statistics, the state commissioner of health shall notify such registrar that such defects must be corrected within ten days of the date of the notice. If such defects are not so corrected the state commissioner of health shall take control of such registration and of the records thereof, and enforce the rules and regulations in regard thereto and secure a complete registration in such district, and such control shall continue until the registrar of vital statistics shall satisfy the commissioner of health that he will make such record and registry complete as required by law and by the rules and regulations of the public health council. The expenses incurred by the state commissioner of health or his authorized representative while in control of such registration shall be a charge upon the city, town or village comprising the registration district.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 375. Permits for burial or removal of dead bodies.

The body of any person whose death occurs in this state or which shall be found dead therein shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of or removed from or into any registration district, or be temporarily held pending further disposition more than seventy-two hours after death, unless a permit for burial, removal, or other disposition thereof shall have been properly issued by the registrar of vital statistics of the registration district in which the death occurred or the body was found. No such burial or removal permit shall be issued by any registrar until, wherever practicable, a complete and satisfactory certificate of death has been filed with him as heretofore provided; provided that when a dead body is transported from outside of the state into a registration district in this state for burial, the transit or removal permit issued in accordance with the law and health regulations of the place where the death occurred shall be given the same force and effect as the burial permit herein provided for. No registrar of vital statistics shall receive any fee for the issuance of burial or removal permits under this act other than the compensation provided in this article.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 376. Registration of stillborn children.

A stillborn child shall be registered as a birth and also as a death, and separate certificates of both the birth and the death shall be filed with the registrar of vital statistics in the usual form and manner, the certificate of birth to contain in place of the name of the child, the word "stillbirth;" provided, that a certificate of birth and a certificate of death shall not be required for a child that has not advanced to the fifth month of uterogestation. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterogestation, in months, if known; and a burial or removal permit of the prescribed form shall be required. Midwives shall not sign certificates of death for stillborn children; but such cases, and stillbirths occurring without attendance of either physician or midwife shall be treated as deaths without medical attendance, as herein-after provided in this article.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 377. Certificate of death.

The certificate of death shall contain the following items, which are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records.

1. Place of death, including state, county, township, village or city. If in a city, the ward, street and house number; if in a hospital or other institution, the name of the same to be given instead of the street and house number. If in an industrial camp, the name of the camp to be given.

2. Full name of decedent. If an unnamed child, the surname preceded by "unnamed."

3. Sex.

4. Color or race—as white, black, mulatto (or other negro descent), Indian, Chinese, Japanese, or other.

5. Conjugal condition—as single, married, widowed or divorced.

6. Date of birth, including the year, month, and day.

7. Age, in years, months and days. If less than one day, the hours or minutes.

8. Occupation. The occupation to be reported of any person, male or female, who had any remunerative employment, with the statement of trade, profession or particular kind of work; general nature of industry, business or establishment in which engaged or employed.

9. Birthplace; at least state or foreign country, if known.

10. Name of father.

11. Birthplace of father; at least state or foreign country, if known.

12. Maiden name of mother.

13. Birthplace of mother; at least state or foreign country, if known.

14. Signature and address of informant.

15. Official signature of registrar, with the date when certificate was filed, and registered number.

16. Date of death, year, month and day.

17. Certification as to medical attendance on decedent, fact and time of death, time last seen alive, and the cause of death, with contributory, that is to say, secondary cause of complication, if any, and duration of each, and

whether attributed to dangerous or insanitary conditions of employment; signature and address of physician or official making the medical certificate.

18. Length of residence at place of death and in the state, together with the place where disease was contracted, if not at place of death, and former or usual residence.

19. Place and date of burial, cremation or removal.

20. Signature and address of undertaker or person in charge of the corpse.

The particulars called for by items one to thirteen inclusive shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person in charge of the corpse.

The medical certificates shall be made and signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive and the hour of the day at which death occurred. He shall further state the cause of death, so as to show the cause of disease or sequence of causes resulting in the death, giving first the name of the disease causing death, that is to say, the primary cause, and the contributory, that is to say, the secondary cause, if any, and the duration of each. Indefinite terms, denoting only symptoms of disease or conditions resulting from disease, shall not be held sufficient for the issuance of a burial or removal permit. Any certificate stating the cause of death in terms which the state commissioner of health shall have declared indefinite, shall be returned to the physician or person making the medical certificate for correction and more definite statement. Causes of death which may be the result of either disease or violence shall be explicitly defined; and if from violence, the means of injury shall be stated, and whether apparently accidental, suicidal, or homicidal. For deaths in hospitals, institutions, or of non-residents, the physician shall supply the information required under item 18, if he is able to do so, and may state where, in his opinion, the disease was contracted.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 378. Registration of deaths occurring without medical attendance.

In case of any death occurring without medical attendance, it shall be the duty of the undertaker or other person to whose knowledge the death may come to notify the local health officer of such death, and when so notified the health officer shall immediately investigate and certify as to the cause of death; provided that if the health officer has reason to believe that the death may have been due to unlawful act or neglect he shall then refer the case to the coroner or other proper officer for his investigation and certification. The coroner or other proper officer whose duty it is to hold an inquest on the body of a deceased person, and to make the certificate of death required for a burial permit, shall state in his certificate the name of the disease causing death, or if from external causes, the means of death; whether probably accidental, suicidal or homicidal; and shall, in any case, furnish such information as may be required by the state commissioner of health in order properly to classify the death.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 379. Duties of undertaker.

In each case the undertaker or person having charge of the corpse, shall file the certificate of death with the registrar of the district in which the death occurred and obtain a burial or removal permit prior to any disposition of the body. He shall obtain the required personal and statistical particulars from a person qualified to supply them, over the signature and address of his informant. He shall then present the certificate to the attending physician, who shall forthwith fill out and sign the medical certificate of death, or to the health officer or coroner, for the medical certificate of the cause of death and other particulars necessary to complete the record for the registration of deaths, as specified in this article, if no physician was in attendance upon the deceased. He shall then state the facts required relative to the date and place of burial, cremation or removal, over his signature and with his address, and present the completed certificate to the registrar in order to obtain a permit for burial, removal or other disposition of the body. The undertaker shall deliver the burial permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the removal permit to the box containing the corpse, when shipped by any transportation company; said permit to accompany the corpse to its destination, where if within the state of New York, it shall be delivered to the person in charge of the place of burial.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 380. Duties of undertakers; interment within the state.

If the interment, or other disposition of the body is to be made within the state, the wording of the burial or removal permit may be limited to a statement by the registrar, and over his signature, that a satisfactory certificate of death, having been filed with him, as required by law, permission is granted to inter, remove or dispose otherwise of the body, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the commissioner of health.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 381. Interments.

No person in charge of any premises on which interments or cremations are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, cremation or transit permit, as herein provided. Such person shall endorse upon the permit, the date of interment, or cremation over his signature, and shall return all permits so endorsed to the registrar of his district within seven days from the date of interment or cremation. He shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker; which record shall at all times be open to official inspection; provided that the undertaker or person having charge of the corpse, when burying a body in a cemetery or burial ground having no person in charge, shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words "No person in charge," and file the burial or removal permit within three days with the registrar of the district in which the cemetery is located.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 382. Registration of births.

The birth of each and every child born in this state shall be registered within five days after the date of each birth, there shall be filed with the registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form prescribed therefor by the state commissioner of health. In each case where a physician, midwife or person acting as midwife, was in attendance upon the birth, it shall be the duty of such physician, midwife or person acting as midwife, to file said certificate. In each case where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred, or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within five days after the date of such birth, to report to the local registrar the fact of such birth. In such case and in case the physician, midwife or person acting as midwife in attendance upon the birth is unable, by diligent inquiry, to obtain any item or items of information required in this article, it shall then be the duty of the registrar to secure from the person so reporting, or from any other person having the required knowledge, such information as will enable him to prepare the certificate of birth herein required, and it shall be the duty of the person reporting the birth or who may be interrogated in relation thereto to answer correctly and to the best of his knowledge all questions put to him by the registrar which may be calculated to elicit any information needed to make a complete record of the birth as contemplated by this article, and it shall be the duty of the informant as to any statement made in accordance herewith to verify such statement by his signature, when requested so to do by the local registrar.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 383. Certificate of birth.

The certificate of birth shall contain the following items, which are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records.

1. Place of birth, including state, county, town, village or city. If in a city, the ward, street and house number; if in a hospital or other institution, the name of the same to be given, instead of the street and house number.

2. Full name of child. If the child dies without a name, before the certificate is filed, enter the words "Died unnamed." If the living child has not yet been named at the date of filing certificate of birth, the space for "full name of child" is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided.

3. Sex of child.

4. Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child in case of plural births.

5. For plural births, number of each child in order of birth.

6. Whether legitimate or illegitimate.

7. Date of birth, including the year, month and day.

8. Full name of father; provided, that if the child is illegitimate, the name of the putative father shall not be entered without his consent, but the other particulars relating to the putative father may be entered if known, otherwise as "unknown."

9. Residence of father.
 10. Color or race of father.
 11. Age of father at last birthday, in years.
 12. Birthplace of father; at least state or foreign country, if known.
 13. Occupation of father. The occupation to be reported if engaged in any remunerative employment, with the statement of trade, profession, or particular kind of work; general nature of industry, business or establishment in which engaged or employed.
 14. Maiden name of mother.
 15. Residence of mother.
 16. Color or race of mother.
 17. Age of mother at last birthday, in years.
 18. Birthplace of mother; at least state or foreign country, if known.
 19. Occupation of mother. The occupation to be reported if engaged in any remunerative employment, with the statement of trade, profession, or particular kind of work; general nature of industry, business or establishment in which engaged or employed.
 20. Number of children born to this mother, including present birth.
 21. Number of children of this mother living.
 22. The certification of attending physician or midwife as to attendance at birth, including statement of year, month, day and hour of birth, and whether the child was born alive or stillborn. This certification shall be signed by the attending physician or midwife, with date of signature and address; if there was no physician or midwife in attendance, then by the father or mother of the child, householder, owner of the premises, manager or superintendent of public or private institution where the birth occurred, or other competent person, whose duty it shall be to notify the local registrar of such birth.
 23. Exact date of filing in office of local registrar, attested by his official signature, and registered number of birth, as hereinafter provided.
- Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 384. Registration of name of child subsequent to filing of birth certificate.

When any certificate of birth of a living child is presented without the statement of the given name, the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 385. Registration of physicians, midwives, and undertakers.

Every physician, midwife and undertaker shall, on or before the day on which this article takes effect, register his or her name, address and occupation with the registrar of the district in which he or she resides, and shall so register in any district in which he or she may hereafter establish a residence; and shall thereupon be supplied by the registrar with a copy of this article, together with such rules and regulations as may be prepared by the public health council relative to its enforcement. Within thirty days after the close of each calendar year each registrar shall make a return to the state commissioner of health of all physicians, midwives, or undertakers who have been registered in his district during the whole or any part of the preceding

calendar year; provided, that no fee or other compensation shall be charged by registrars to physicians, midwives or undertakers for registering their names under this section or making returns thereof to the state commissioner of health.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 386. Registration of persons in institutions.

All superintendents or managers or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases or confinement, or to which persons are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates in their institutions when this act takes effect; which are required in the forms of the certificate provided for by this article as directed by the state commissioner of health; and thereafter such record shall be by them made for all future inmates at the time of their admittance. In the case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 387. Records to be kept by state commissioner of health.

The state commissioner of health shall prepare, print, and supply to all registrars all blanks and forms used in registering, recording and preserving the returns, or in otherwise carrying out the purposes of this article, and shall prepare and issue such detailed instructions, not inconsistent with the regulation established by the public health council, as may be required to procure the uniform observance of its provision and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the state commissioner of health. He shall carefully examine the certificates received monthly from the registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. All physicians, midwives, undertakers, or informants, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the state commissioner of health or upon the original certificate, such information as they may possess regarding any birth or death upon demand of the state commissioner of health, in person, by mail, or through the registrar; provided, that no certificate of birth or death, after its acceptance for registration by the registrar, and no other record made in pursuance of this article, shall be altered or changed in any respect otherwise than by amendments properly dated, signed and witnessed. The state commissioner of health shall arrange, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card index of all births and deaths registered; said index to be arranged alphabetically, in the case of deaths, by the names of decedents, and in the case of births, by the names of fathers or mothers if born out of wed-

lock. He shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided by the public health council in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 388. Certified copies of birth certificates evidence of age.

Certified copies of birth certificates, or of statements based on duly registered certificates of birth shall be accepted by public school authorities in this state as prima facie evidence of age of children, registering for school attendance, and by the legally constituted authorities as prima facie proof of age for the issuance of employment certificates, provided that when it is not possible to secure such certified copy of birth registration certificate for any child, the school authorities may accept as secondary proof of age any of the kinds of evidence specified in the labor law.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 389. District records to be kept by registrar.

Each registrar shall supply blank forms of certificates to such persons as require them. Each registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this act and the instructions of the state commissioner of health; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold the burial or removal permit until such defects are corrected. All certificates, either of birth or death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker; provided, that in case the death occurred from some disease which is held by the public health council to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except to an undertaker licensed under section two hundred and ninety-five of the public health law, under such conditions as may be prescribed by the state public health council. If a certificate of birth is incomplete, the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with the number one for the first birth and the first death in each calendar year, and sign his name as registrar in attestation of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied by the state commissioner of health, to be preserved permanently in his office as the local record, in such manner as directed by the commissioner of health. He shall, on the fifth day of each month, transmit to the state commissioner of health all original certificates registered by him for the preceding month. If no births or no deaths occurred in any month, he shall on the fifth day of the following month, report that fact to the state commissioner of health on a card provided for such purpose.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 390. Fees of registrar for the prompt and correct return and filing of birth and death certificates.

Except as hereinbefore otherwise provided each registrar and each physician shall be paid the sum of twenty-five cents for each birth certificate properly and completely made out and registered and each death certificate properly and completely made out in accordance with the international list of causes of death and returned and filed with the registrar and correctly recorded and promptly returned by him to the state commissioner of health, as required by this article. And in case no births or no deaths were registered during any month, the local registrar shall be entitled to be paid the sum of twenty-five cents for each report to that effect, but only if such report be made promptly as required by this article. All amounts payable to the local registrar under the provisions of this article shall be paid by the municipality comprising the registration district, upon certification by the state commissioner of health and all amounts payable to physicians shall be certified to by the local registrar annually and paid to said physicians by said municipality. The state commissioner of health shall annually certify to the municipality the number of births and deaths properly registered, with the name of the local registrar and the amount due him at the rate fixed herein. In addition thereto the local registrar shall be paid a fee of twenty-five cents for each burial, removal or transit permit issued by him.

Added by L. 1913, Ch. 619, and amended by L. 1915, Ch. 385, and L. 1917, Ch. 111, in effect March 30, 1917.

§ 391. Certified copies of records; state commissioner of health to furnish.

The state commissioner of health may, upon request, supply to any applicant a certified copy of the record of any birth or death registered under the provisions of this act, for the making and certification of which he shall be entitled to a fee of one dollar, to be paid by the applicant; provided that the United States census bureau may obtain, without expense to the state, transcripts of certified copies of births and deaths without payment of the fee here prescribed, for use solely as statistical data. Any copy of the record of a birth or death, when properly certified by the state commissioner of health, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the state commissioner of health shall be entitled to a fee of fifty cents for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant.

If any time within ten years of the birth, or one year of the death of any person within this state, a certified copy of the official record of said birth or death with the information required to be registered by this act, be necessary for legal, judicial, or other proper purposes, and, after search by the state commissioner of health, it should appear that no such certificate of birth or death was made and filed as provided by this act, then the person asking for such certified copy may file a sworn statement, to be accompanied by the affidavits of two competent witnesses, as to the fact of birth or death, with as many particulars of the standard certificate supplied as possible, and the state commissioner of health shall file it and issue a certificate copy thereof to said applicant without fee and without charge for time of search; and the state commissioner of health shall immediately require the physician, or midwife, who, being in attendance upon a birth since the date of the taking effect of this act, failed or neglected to file a certificate thereof or the undertaker, or other person who having charge of the interment or removal of the body of a deceased person since the date of the taking effect of this act, failed or neglected to file the certificate of death, if he or she be living, to obtain and file at once with the local registrar such certificate in as complete form as the lapse of time will permit, together with a fee of five dollars, which shall be transmitted to the state commissioner of health and accounted for as a fee for certified copies. With said certificate shall be filed

the sworn statements and affidavits hereinabove mentioned. The delinquent physician, midwife, undertaker, or other person may also, in the discretion of the state commissioner of health be prosecuted as required by this article, and shall be prosecuted without bar from the statute of limitations, if he or she shall neglect or fail to file promptly the certificate required by this section as a substitute for the certificate not filed as required by this article, and to pay the filing fee provided for in this section.

The state commissioner of health shall keep a true and correct account of all fees by him received under this section, and turn the same over to the state treasurer.

Added by L. 1913, Ch. 619, in effect Jan. 1, 1914.

§ 392. Penalties.

Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, shall inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done, or shall remove said body from the primary registration district in which the death occurred or the body was found, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred, or in which the body was found; or shall refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this article; or shall willfully alter, otherwise than is provided by this article, or shall falsify any certificate of birth or death, or any record established by this article; or being required by this article to fill out a certificate of death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, shall fail, neglect or refuse to perform such duty in the manner required by this article; or being a registrar, deputy registrar, or subregistrar, shall fail, neglect or refuse to perform his duty as required by this article and by the instructions and direction of the state commissioner of health thereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined not less than five dollars nor more than fifty dollars and for each subsequent offense not less than ten dollars, or more than one hundred dollars or be imprisoned in the county jail not more than sixty days, or be both fined and imprisoned in the discretion of the court. Whenever any physician, midwife, or other person shall fail or neglect to properly record and file a certificate of birth as required by this article such person shall be liable to a penalty of not less than five dollars nor more than fifty dollars for the first and second offenses, which penalty may be recovered by an action brought by the state commissioner of health in any court of competent jurisdiction, and for every subsequent offense, such person shall be guilty of a misdemeanor, punishable by a fine of not less than ten nor more than one hundred dollars, or by imprisonment for not more than sixty days, or both.

Added by L. 1913, Ch. 619, and amended by L. 1916, Ch. 58, in effect March 20, 1916.

§ 393. Enforcement.

Each registrar is hereby charged with the strict and thorough enforcement of the provisions of this article, in his registration district, under the supervision and direction of the state commissioner of health. He shall make an immediate report to the state commissioner of health of any violation of any provision of this article coming to his knowledge, by observation or upon complaint of any person, or otherwise.

The state commissioner of health is hereby charged with the thorough and efficient execution of the provisions of this article in every part of the state, and is hereby granted supervisory power over registrars, deputy registrars, and subregistrars, to the end that all of its requirements shall be uniformly

complied with. The state commissioner of health, either personally or by an accredited representative, shall have authority to investigate cases of irregularity or violation of law, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this article to the district attorney of the county, with a statement of the facts and circumstances; and when any such case is reported to him by the state commissioner of health, the prosecuting attorney shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. Upon request of the state commissioner of health, the attorney-general shall assist in the enforcement of the provisions of this article.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

§ 394. Exemptions.

Nothing in this article shall be construed to affect, alter, or repeal laws now in force applying to the city of New York.

Added by L. 1913, ch. 619. In effect Jan. 1, 1914.

ARTICLE 30.*

Sanitary Conditions in Hotels.

Section 354. Sewers and drainage.

355. Bedding, sheets and towel

356. Violation a misdemeanor.

§ 354. Sewers and drainage.

Every hotel in this state shall be well drained and ventilated and every hotel connected with a cesspool or located in any city or village having a sewer system shall be well ventilated, drained, plumbed and connected according to sanitary principles with such cesspool or sewer system, and shall be kept free from effluvia arising from sewer, drain, water closet or other source within the control of the owner, manager, agent or other person in charge of said hotel.

§ 355. Bedding, sheets and towels.

Every hotel in this state shall furnish each guest with clean linen or cotton individual towels in each room occupied by such guest, and also in the public lavatories and washrooms of such hotel, and with clean sheets and pillow slips for the bed, bunk, or cot to be occupied by such guest. Each sheet used shall be ninety-one inches long, minimum length after being hemmed and laundered, and of sufficient width to completely cover the mattress and springs, and all sheets and pillow slips after being used by one guest must be washed, ironed and dried before being furnished to another guest.

§ 356. Violation a misdemeanor; enforcement.

All departments of health and the commissioner or commissioners thereof shall have power to enforce the provisions of this article. The commissioners of health and the respective local boards of health and any person authorized by either of them so to do, may enter any hotel or any part thereof at any reasonable time to inspect and examine the same, to determine whether or not the laws relating to hotels are being complied with. Any hotel proprietor or manager violating any of the provisions of this article is guilty of a misdemeanor. This article shall not apply to cities having a population of one million inhabitants or over.

* Article added by L. 1913, ch. 630, in effect Sept. 1, 1913.

VIII. ELECTION LAW*—MISCELLANEOUS PROVISIONS.

(Chapter 17 of the Consolidated Laws.)

§ 45. Direct nomination of candidates for public office.

Party nominations for all offices to be filled at a general election, except town, village and school district offices and electors of the president and vice-president of the United States, shall be made at the fall primary next preceding such general election by the enrolled voters of the party as in this chapter provided. Nominations of party candidates for town, village and school district offices shall be made in the manner prescribed by the rules and regulations of the county committee of the county wherein such town, village or school district is located. (Part of section.)

Amended by L. 1914, Ch. 5, in effect Feb. 12, 1914.

§ 74. Primary districts, officers and polling places.

The custodian of primary records shall thirty days before each official primary day, divide every ward in a city, except a city of the first class, and divide every village having five thousand inhabitants or more, into primary districts, each of which shall consist of two contiguous election districts, except that in case there is an odd number of election districts in such ward or village, the highest numbered election district shall be a primary district by itself. In each of such primary districts, except where an election district shall be a primary district by itself, there shall be two polling places. Such polling places shall be designated and provided at public expense by the officers or boards whose duty it is to provide polling places for days of general election, and shall be, so far as they are available, the same places as were used for the last preceding general election. The custodian of primary records shall assign one of the polling places in each such primary district to the party which, at the last election of governor, cast the highest number of votes

* Editor's Note.—For a full treatment of the Election Law of the State of New York pertaining to election officers and voters, see Jewett's Election Manual.

for governor, and at the other polling place in such primary district there shall be held the primary elections of all other parties. In all other villages and towns, and in each city of the first class, each election district shall constitute a primary district. In a city, town or village in which each or any election district constitutes a primary district there shall be for each such primary district primary election officers, who shall consist of the election inspectors for the election district comprising such primary district and such inspectors shall be the board of primary inspectors. In a city or village having more than five thousand inhabitants, except a city of the first class, there shall be for each primary district having two polling places two groups of primary election officers, one of which shall consist of the election inspectors for the election districts comprised within such primary district who shall at the time represent the party which at the last preceding election of a governor shall have cast the largest number of votes for governor, and the other of which shall consist of the election inspectors who shall represent the party which, at such election, shall have cast the second largest number of votes for governor. The first mentioned officers shall conduct the primary election of the party represented by them and the second mentioned officers shall conduct the primary elections of all other parties at the time entitled to hold primary elections. The election inspectors belonging to each such group of primary officers shall be the board of primary inspectors.

In a city, town or village in which each or any election district constitutes a primary district the polling place in each such primary district shall be designated and provided at public expense by the officers or boards whose duty it is to provide the polling places for the general election, and, where practicable, it shall also be the same place that was used at the last preceding general election, unless the primary polls be placed in a school or other public building as provided in section two hundred and ninety-nine. (Amended by L. 1918, ch. 323, in effect April 24, 1918.)

§ 121. Certification and filing of nominations for town, village and certain other offices.

A person nominated at a party primary for a town or village office or for a city office to be filled at an election held at a different time from the general election shall receive a certificate of such nomination. It shall be signed by the presiding officer and a secretary of such primary, or, if made by a committee, by a majority of the members thereof, who shall add to their signatures their respective places of residence, and shall make oath before an officer qualified to take affidavits that the affiants were such officers of such primary or that they are members and constitute a majority of such committee, as the case may be, and that such certificates and the statements therein con-

tained are true to the best of their information and belief. A certificate that such oath has been administered shall be made and signed by the officer before whom the same was taken and attached to such certificate of nomination. Such certificate of nomination shall contain the title of the city, town or village office for which such person is nominated and his name and residence. Such certificate shall also designate, in not more than five words, the name of the political party by which the nomination is made and shall be properly authenticated. Such certificate shall also, upon its face, appoint a committee of three or more persons to fill a vacancy in any of such nominations occurring for any of the reasons specified in section one hundred and thirty-five of this chapter between the date of such nomination and the day of election.

Such certificate shall be filed with the clerk of such city, village or town, respectively. In towns in which town meetings are held at the time of the general election, certificates of nomination of candidates for town offices shall be in duplicate, one of which shall be filed with the town clerk of the town in which such officers are to be voted for and the other with the board of elections of the county in which such town is located. Such certificates, in towns in which town meetings are held at the time of the general election, shall be so filed not earlier than the tenth Tuesday and not later than six days after the ninth Tuesday before such election. In villages, and in cities and towns in which the city elections or town meetings are held at a time other than the day of general election, such certificates shall be filed with such city, village or town clerk, not less than twenty nor more than thirty days before the day of election or town meeting. All such filed certificates and corrected certificates of nomination, all objections to such certificates and all declarations of nominations are hereby declared to be public records.

Amended by L. 1913, ch. 820; L. 1915, ch. 678; L. 1916, ch. 537; L. 1917, ch. 703, and L. 1918, ch. 298, in effect April 20, 1918.

§ 122. Independent nominations.

Nominations made as provided by this and the next section shall be known as independent nominations, and the certificate whereby such nominations are made shall be known as an independent certificate of nomination. Independent nominations of candidates for public office to be voted for by all the voters of the state can only be made by six thousand or more voters of the state; provided, however, that in making up such number at least fifty voters in each county of the state (the counties of Fulton and Hamilton to be considered as one county) shall subscribe the certificate provided for in this and the next section. Independent nominations of candidates for offices to be voted for by the voters of any political subdivision of the state can only be made by five per centum of the total number of votes cast for governor at the last

gubernatorial election in such political subdivision, excepting that not more than three thousand electors shall be required to make an independent nomination in any political subdivision; and excepting that not more than one thousand five hundred electors shall be required to make an independent nomination for a borough or county office.

Amended by L. 1911, ch. 891; L. 1913, ch. 800.

§ 127. Places of filing independent certificates of nomination.

Independent certificates of nomination of candidates for office to be filed by the voters of the entire state, or of any division or district greater than a county, shall be filed with the secretary of state, except that each such certificate of nomination of a candidate for member of assembly for the assembly district composing the counties of Fulton and Hamilton shall be filed in the office of the board of elections of Fulton county, and a copy thereof certified by the board of elections of Fulton county shall be filed in the office of the board of elections of Hamilton county, so long as the said counties constitute one assembly district, and except that such certificates of nomination of candidates for offices to be filled only by the voters or a portion of the voters of the city of New York shall be filed with the board of elections of the city of New York.

Independent certificates of nomination of candidates for offices to be filled only by the votes of voters, part of whom are of New York city and part of whom are of a county not wholly within the city of New York, shall be filed with the board of elections of such county and in the office of the board of elections of said city. Such certificates of nomination of candidates for offices of any other city, to be elected at the same time at which a general election is held shall be filed with the board of elections of the county in which such city is located. Such certificates of nomination of candidates for offices of a city, village or town to be elected at a different time from a general election shall be filed with the clerk of such city, village or town, respectively.

In towns in which town meetings are held at the time of general elections, independent certificates of nomination of candidates for town offices shall be in duplicate, one of which shall be filed with the town clerk of the town in which such officers are to be voted for, and the other with the board of elections of the county in which such town is located. All other independent certificates of nomination shall be filed with the board of elections of the county in which the candidates so nominated are to be voted for.

All such filed certificates and corrected certificates of nominations, all objections to such certificates and all declinations of nomination are hereby declared to be public records; and it shall be the duty of every officer or board to exhibit without delay every such paper to any person who shall request to see the

tained are true to the best of their information and belief. A certificate that such oath has been administered shall be made and signed by the officer before whom the same was taken and attached to such certificate of nomination. Such certificate of nomination shall contain the title of the city, town or village office for which such person is nominated and his name and residence. Such certificate shall also designate, in not more than five words, the name of the political party by which the nomination is made and shall be properly authenticated. Such certificate shall also, upon its face, appoint a committee of three or more persons to fill a vacancy in any of such nominations occurring for any of the reasons specified in section one hundred and thirty-five of this chapter between the date of such nomination and the day of election.

Such certificate shall be filed with the clerk of such city, village or town, respectively. In towns in which town meetings are held at the time of the general election, certificates of nomination of candidates for town offices shall be in duplicate, one of which shall be filed with the town clerk of the town in which such officers are to be voted for and the other with the board of elections of the county in which such town is located. Such certificates, in towns in which town meetings are held at the time of the general election, shall be so filed not earlier than the tenth Tuesday and not later than six days after the ninth Tuesday before such election. In villages, and in cities and towns in which the city elections or town meetings are held at a time other than the day of general election, such certificates shall be filed with such city, village or town clerk, not less than twenty nor more than thirty days before the day of election or town meeting. All such filed certificates and corrected certificates of nomination, all objections to such certificates and all declinations of nominations are hereby declared to be public records.

Amended by L. 1913, ch. 820; L. 1915, ch. 678; L. 1916, ch. 537; L. 1917, ch. 703, and L. 1918, ch. 298, in effect April 20, 1918.

§ 122. Independent nominations.

Nominations made as provided by this and the next section shall be known as independent nominations, and the certificate whereby such nominations are made shall be known as an independent certificate of nomination. Independent nominations of candidates for public office to be voted for by all the voters of the state can only be made by six thousand or more voters of the state; provided, however, that in making up such number at least fifty voters in each county of the state (the counties of Fulton and Hamilton to be considered as one county) shall subscribe the certificate provided for in this and the next section. Independent nominations of candidates for offices to be voted for by the voters of any political subdivision of the state can only be made by five per centum of the total number of votes cast for governor at the last

gubernatorial election in such political subdivision, excepting that not more than three thousand electors shall be required to make an independent nomination in any political subdivision; and excepting that not more than one thousand five hundred electors shall be required to make an independent nomination for a borough or county office.

Amended by L. 1911, ch. 891; L. 1913, ch. 800.

§ 127. Places of filing independent certificates of nomination.

Independent certificates of nomination of candidates for office to be filed by the voters of the entire state, or of any division or district greater than a county, shall be filed with the secretary of state, except that each such certificate of nomination of a candidate for member of assembly for the assembly district composing the counties of Fulton and Hamilton shall be filed in the office of the board of elections of Fulton county, and a copy thereof certified by the board of elections of Fulton county shall be filed in the office of the board of elections of Hamilton county, so long as the said counties constitute one assembly district, and except that such certificates of nomination of candidates for offices to be filled only by the voters or a portion of the voters of the city of New York shall be filed with the board of elections of the city of New York.

Independent certificates of nomination of candidates for offices to be filled only by the votes of voters, part of whom are of New York city and part of whom are of a county not wholly within the city of New York, shall be filed with the board of elections of such county and in the office of the board of elections of said city. Such certificates of nomination of candidates for offices of any other city, to be elected at the same time at which a general election is held shall be filed with the board of elections of the county in which such city is located. Such certificates of nomination of candidates for offices of a city, village or town to be elected at a different time from a general election shall be filed with the clerk of such city, village or town, respectively.

In towns in which town meetings are held at the time of general elections, independent certificates of nomination of candidates for town offices shall be in duplicate, one of which shall be filed with the town clerk of the town in which such officers are to be voted for, and the other with the board of elections of the county in which such town is located. All other independent certificates of nomination shall be filed with the board of elections of the county in which the candidates so nominated are to be voted for.

All such filed certificates and corrected certificates of nominations, all objections to such certificates and all declinations of nomination are hereby declared to be public records; and it shall be the duty of every officer or board to exhibit without delay every such paper to any person who shall request to see the

same. It shall also be the duty of each such officer or board to keep a book which shall be open to public inspection, in which shall be correctly recorded the names of all candidates nominated by independent certificates issued by or filed in the office of such officer or board or certified thereto, the title of the office for which any such nomination is made, the name and emblem of the independent body making such nomination, and in which shall also be stated all declinations of such nomination or objections to such nominations, and the time of filing each of the said papers.

Amended by L. 1911, ch. 891; L. 1913, ch. 820, in effect Dec. 17, 1913.

§ 128. Times of filing independent certificates of nomination.

Independent certificates of nomination, except those for the nomination of candidates to be elected at a different time from a general election, shall be filed not earlier than the ninth Tuesday and not later than two days after the eighth Tuesday preceding the day of the general election. Independent certificates of nomination of candidates to be elected at a different time from a general election shall be filed at least fifteen and not more than thirty days before the day of the election.

In case of a special election ordered by the governor under the provisions of section two hundred and ninety-two of this chapter, independent certificates of nomination for the office or offices to be filled at such special election shall be filed with the proper officers or boards not less than ten days before such special election.

Amended by L. 1911, ch. 891; L. 1913, ch. 820, and L. 1918, ch. 298, in effect April 20, 1918.

§ 131. Lists for town clerks and aldermen.

The board of elections of each county, except those counties which are wholly within the city of New York, shall at least six days before election day send to the town clerk of each town, and to an alderman of each ward in any city in the county, at least five and not more than ten printed lists for each election district in such town or ward, containing the name and residence, and if in a city the street number of residence, and place of business, if any, of all candidates whose certificates of nomination have been filed with or issued by it or been certified to it, and the party or other designation, and also a fac simile of the emblem or device of each political party or independent body nominating candidates to be voted for by the voters of the respective towns and wards. Such lists shall at least three days before the day of election be conspicuously posted by such town clerk or alderman in one or more public

places in each election district of such town or ward, one of which lists shall be so posted at each polling place.

Amended by L. 1911, ch. 891.

§ 132. Posting town and village nominations.

Each town and village clerk shall cause at least ten copies of a like list of all nominations to office filed with him for an election to be held at a time other than the day of the general election, to be conspicuously posted in ten public places in the town or village, at least one day before the town meeting or village election, one of which copies shall be so posted at each polling place of such town meeting or village election.

§ 133. Declination of nomination.

The name of a person nominated for an office otherwise than by an official primary election, shall not be printed on the official ballot if he notifies the board or officer with whom the original certificate of his nomination is filed, in a writing signed by him and duly acknowledged, that he declines the nomination, or if nominated by more than one political party or independent body, the name of a person so nominated shall not be printed on the ticket of a party or independent body whose nomination he shall in like manner decline. If the declination be of a nomination for an office to be filled at a general election, or at a city election or town meeting held at the time of a general election, such notification shall be given not later than four days after the eighth Tuesday before the general election. If the declination be of a party nomination for a city office to be filled at a city election held at a different time from the general election, such notification shall be given at least eighteen days before the election. If the declination be of an independent nomination for a city office to be filled at a city election held at a different time from the general election, such notification shall be filed at least twelve days before the election. If the declination be of a party nomination for an office to be filled at a village election or at a town meeting held at a time different from a general election, such notification shall be given at least fifteen days, and if of an independent nomination at least ten days before the election. If a declination of nomination to a town office, in towns where town meetings are held at the time of general elections, be filed in the office of the board of elections, such board shall forthwith notify the town clerk in writing of such declination.

When a person who was not designated for nomination at an official primary election receives a nomination for public office at such primary, it shall be the duty of the board or officer with whom designations for nomination to such office are required by this chapter to be filed to forthwith notify, by mail, such person of his nomination. A person nominated as aforesaid, without designation, at an official primary, may decline such nomination not later than the seventh day after the day of the primary at which he was nominated, by filing his written declination thereof, signed by him and duly acknowledged, with the board or officer with whom designations for nomination to such office are required by this chapter to be filed.

The board or officer to whom such notification is given shall forthwith inform by mail or otherwise the committee authorized to fill the vacancy pur-

suant to sections one hundred and twenty-one or one hundred and twenty-three of this chapter, that the nomination has been declined, and if such declination be filed with the secretary of state, such officer shall also give immediate notice by mail or otherwise that such nomination has been declined, to the several boards of elections or other officers authorized by law to prepare official ballots for election districts affected by such declination.

Amended by L. 1911, ch. 891; L. 1913, ch. 820, and L. 1918, ch. 298, in effect April 20, 1918.

§ 136. Certificates of new nominations.

The certificate so made shall be subscribed and acknowledged by a majority of the members of the committee, and the members of the committee subscribing the same shall make oath before the officer or officers before whom they shall severally acknowledge the execution of the said certificate that the matters therein stated are true to the best of their information and belief. Except in case of the death of a candidate after the official ballots have been printed and before election day, or after the seventh Tuesday preceding the election if the election is to occur at the time of a general election, the said certificate, or a certificate of nomination to fill a vacancy by the committee provided for in section ninety, shall be filed in the office in which the original certificate was filed, in the office provided for in section ninety, as the case may be, as follows: if for a nomination for a city office to be filled at a city election held at a time different from the general election, at least eight days before the election; if for a nomination for a village office or for a town office to be filled at a town meeting held at a time different from the general election, at least five days before the election; in any other case, not later than the seventh Tuesday before the election. Upon being so filed such certificate shall have the same force and effect as an original certificate of nomination. When a new certificate of nomination is filed with the secretary of state, he shall in certifying the nomination to the various boards and officers, insert the name of the person who has been thus nominated, instead of that of the candidate nominated originally, or, if he has already sent forward his certificate, he shall forthwith certify to such boards and other officers the name of the person newly nominated, and such other facts as are required to be stated in such certificate.

Amended by L. 1911, ch. 891; L. 1913, ch. 820, and L. 1918, ch. 298, in effect April 20, 1918.)

§ 158. Registration in cities and in villages of five thousand inhabitants.

In cities and villages having five thousand inhabitants or more, the names of such persons only as personally appear before the inspectors, and who are or will be at the election for which the registration is made, qualified electors, shall be registered for a general election, except that whenever any election district in a village having five thousand inhabitants or more shall embrace within its boundaries territory without the limits of such village, the inspectors shall, at their first meeting for registration for a general election, place upon such register the names of all persons appearing on the register of the last preceding general election who resided without the limits of such village but within the election district and who voted at such last preceding general election, except the names of such electors as are proven to the satis-

faction of such inspectors to have ceased to be electors since such general election or to have moved within the limits of such village. They shall also place upon such register, at their first and subsequent meetings, the names of all other persons residing without the limits of the village and within such election district who may then appear before such inspectors and apply for registration and who are or who will be at the election for which the registration is made qualified electors, and also, at their first and subsequent meetings, the names of all persons not registered under the foregoing provisions who are known or proven to the satisfaction of the inspectors to be then or thereafter entitled to vote at such election and who reside within such election district but without the limits of such city or village.

Amended by L. 1911, Ch. 649; L. 1913, Ch. 820, and L. 1916, Ch. 537, in effect May 15, 1916.

§ 160. Registration for other than general elections.

At the meeting of the board of inspectors in a city or village having five thousand inhabitants or more, for revising and correcting the register for any election other than a general election, the inspector shall retain upon the register of their respective districts the names of all persons qualified to vote at such election in such district which appear upon the register of electors for the last preceding general election in such election district, except the names of such electors as are proven to the satisfaction of the inspectors to have ceased to be electors of such district since their names were placed upon such register, and shall, at such meeting, add only to such register the names of the persons qualified as electors who shall personally appear before the board. If, however, such elector resides within such election district but without the limits of such village, his name shall be placed upon such register, if it is shown to the satisfaction of such board that he is entitled to vote therein.

In cities any elector who was registered in an election district of such city at the last preceding general election, and who since that time shall have removed into another election district in the same city, and who is otherwise qualified to vote at such special election, shall, upon demand, receive from the board of inspectors of the district in which he was registered for such last preceding general election a certificate duly signed by the said board of the fact that his name was upon such register and has been erased therefrom because of such removal, and his name shall thereupon be erased from such register. Upon presentation of such certificate by the elector to the board of inspectors of the election district in which he resides, his name shall be placed upon the register for such district. The inspectors must note upon the register opposite the name of such elector the fact of such removal, specifying the election district from which he has removed. They shall carefully attach such certificate to the register.

No elector shall cause his name to be placed upon the register of an election district for any election other than a general election, while his name shall appear upon the register of another district to be used at such election.

Any person who shall violate this provision is guilty of a felony, and upon

conviction shall be punished by imprisonment in a state prison for not less than two nor more than five years.

In all election districts other than in cities or in villages of five thousand inhabitants or more, the board of inspectors in preparing for an election other than a general election shall add to the register for the last preceding general election the names of such electors as they know are or are satisfied by proof will be on the day of such election entitled to vote thereat, and shall strike therefrom the names of all persons who are known or are proven to their satisfaction to have ceased to be qualified electors of such election district.

As amended by ch. 649, L. 1911.

§ 161. Registration for town or village elections.

No registration of voters shall be required for town or village elections, except as provided in the village law, and except that when a town or village election is held at the same time with a general election all voters in such town or village to be entitled to vote at such town or village election must be registered as provided by law for the registration of voters for any general election in such town or village.

As amended by ch. 424, L. 1910.

§ 181. Certifying number of registered electors.

At the close of registration on the last day the board of inspectors shall upon blanks furnished by the secretary of state forthwith certify and file with or mail to the officer or board charged with the duty of furnishing ballots to such district and to the state superintendent of elections the total number of electors registered in such district. The inspectors of each district shall also furnish to the same officials in like manner at the close of each day of registration the total number of electors registered on such day in their respective districts. The chairman of the board of inspectors of election of each district shall also forthwith at the close of each day of registration file with or mail to the state superintendent of elections a certificate showing the total number of voters registered therein in the respective election districts.

As amended by L. 1911, ch. 649, and by L. 1915, ch. 678. In effect May 22, 1915.

§ 318. Apportionment of election expenses.

The expense of providing polling places, voting booths, supplies therefor, guard-rails and other furniture of the polling place, and distance markers, and the compensation of the election officers in each election district, shall be a charge upon the town or city in which such election district is situated, except that such expenses incurred for the purpose of conducting a village election not held at the same time as a general election shall be a charge upon the village.

The expense of providing polling places, voting booths, supplies therefor, and cards of instruction, poll books, tally sheets, return sheets for inspectors and ballot clerks, and distance markers to be used at a town meeting or city or village election not held at the same time as a general election, and of printing the lists of nominations therefor shall be a charge upon the town, city or village in which the meeting or election is held. The expense of printing and delivering the official ballots, sample ballots and cards of instruction, poll books, tally sheets, return sheets for inspectors and ballot clerks, and distance markers to be used in any county, except such counties or portions thereof as are included within the city of New York, at any other election, if no town meeting or city or village election be held at the same time therewith, and of printing the lists of nominations therefor, shall be a charge upon such county. The expense of printing and delivering the official ballots, sample ballots and cards of instruction, poll books, tally sheets, return sheets for inspectors and ballot clerks, and distance markers, to be used in any such county at any other election, and of printing the lists of nominations therefor, if the town meeting or city or village election be held in such county at the same time therewith, shall be apportioned by the county clerk between such town, city or village and such county, in the proportion of the number of candidates for town, city or village officers on such ballots, respectively, to the whole number of candidates thereon, and the amount of such expense so apportioned to each such municipality shall be a charge thereon.

Whenever voting machines are used in an election by any city, town or village, only such expenses as are caused by the use of such machines, and such as are necessary for the proper conduct of the elections as required by this chapter shall be charged to such city, town or village.

All expenses relating to or connected with elections lawfully incurred by the board of elections of the city of New York shall be a charge on such city, and after being audited by the proper officer, shall be paid by the comptroller of said city upon the certificate of such board.

§ 341. Officers providing ballots and stationery.

The county clerk, in each of the counties of Oneida and Broome, the commissioner of elections in any county having one commissioner of elections, the board of elections in every other county except a county within the city of New York, and in any such county the board of elections of such city, shall provide the requisite number of official and sample ballots, cards of instruction, two poll books, distance markers, two tally sheets of each kind, three return blanks of each kind, pens, penholders, red and black ink, pencils having black lead, blotting paper, sealing wax and such other articles of stationery as may be necessary for the proper conduct of the election and the canvass of the votes, for each election district in the county, for each election to be held thereat, except that when town meetings, city or village elections and elections for school officers are not held at the same time as a general

election, the clerk of such town, city or village, respectively, shall provide such official and sample ballots and stationery for such election or town meeting. If the town meeting is held on general election day ballots and sample ballots for town propositions and official and sample general ballots on which town officers only are to be voted for shall be provided by the town clerk in like manner and in the same form as at a town meeting held at any other time, and such town clerk shall also furnish return blanks for making returns on town propositions or questions and for making returns of votes cast for candidates for town offices at such an election, and the expense of furnishing such ballots, sample ballots and return blanks shall be a town charge. And the board of elections of the city of New York shall provide such articles for each election to be held in said city.

Amended by L. 1911, Ch. 649; L. 1913, Ch. 821, and L. 1916, Ch. 454, in effect July 1, 1916.

§ 343. Distribution of ballots and stationery.

The board of elections of each county, except those counties which are wholly within the city of New York, shall deliver at its office to each town or city clerk in such county, except in New York city and in the city of Buffalo, on the Saturday before the election for which they are required, the official and sample ballots, cards of instruction and other stationery required to be provided for each polling place in such town or city for such election. It is hereby made the duty of each such town or city clerk to call at the office of such board of elections at such time and receive such ballots and stationery. In the cities of New York and Buffalo the board or officer required to provide such ballots and stationery shall cause them to be delivered to the board of inspectors of each election district at least one-half hour before the opening of the polls on each day of election. Each kind of official ballots shall be arranged in a package in the consecutive order of the numbers printed on the stubs thereof, beginning with number one. All official and sample ballots provided for such election shall be in separate sealed packages, clearly marked on the outside thereof with the number and kind of ballots contained therein and indorsed with the designation of the election district for which they were prepared. The instruction cards and other stationery provided for each election district shall also be inclosed in a sealed package or packages, with a label on the outside thereof showing the contents of each such package. Each such town and city clerk receiving such packages shall cause all such pack-

ages so received and marked for any election district to be delivered unopened and with the seals thereof unbroken to the inspectors of election of such election district one-half hour before the opening of the polls of such election therein. The inspectors of election receiving such packages shall give to such town or city clerk, or board, delivering such packages a receipt therefor specifying the number and kind of packages received by them, which receipt shall be filed in the office of such clerk or board. Town, city and village clerks required to provide the same for town meetings, city and village elections held at different times from a general election, shall in like manner, deliver to the inspectors or presiding officers of the election at each polling place at which such meetings and elections are held, respectively, the official ballots, sample ballots, instruction cards and other stationery, required for such election or town meeting, respectively, in like sealed packages marked on the outside in like manner, and shall take and file receipts therefor in like manner in their respective offices.

Amended by L. 1916, Ch. 537, in effect May 15, 1916.

§ 357. Assistance to disabled or illiterate voters.

Any voter who shall, at the time of registration, have made oath of physical disability or illiteracy, as prescribed by section one hundred and sixty-four of this chapter; or who, being duly registered in an election district where personal registration by all voters is required by law, shall state under oath to the inspectors of election on the day of election that, by reason of some accident, the time and place of which he must specify, or of disease, the nature of which he must also specify, he has, since the day upon which he registered, lost the use of both hands, or become totally blind, or afflicted by such degree of blindness as will prevent him, with the aid of glasses, from seeing the names printed upon the official ballot, or so crippled that he can not enter the voting booth and prepare his ballot without assistance; or any voter in an election district who is not required by law to personally register, who is unable to write by reason of illiteracy, or is physically disabled in one or more ways described in section one hundred and sixty-four of this chapter, and who shall make the statement under oath to the inspectors in the form required in said section, may choose two of the election officers, both of whom shall not be of the same political faith, to enter the booth with him to assist him in preparing his ballots. At any town meeting or village election where the election officers are all of the same political faith, any voter entitled to assistance as herein provided may select one of such election officers and one voter of such town or village of opposite political faith from such election officer so selected, to render such assistance.

Such election officers or persons assisting a voter shall not in any manner request or seek to persuade or induce any such voter to vote any particular ticket, or for any particular candidate, and shall not keep or make any memorandum or entry of anything occurring within such booth, and shall not, directly or indirectly, reveal to any other person the name of any candi-

* So in original.

date voted for by such voter, or which ticket he has voted, except they be called upon to testify in a judicial proceeding for a violation of this chapter, and each election officer, before the opening of the polls for the election, shall make oath that he "will not in any manner request, or seek to persuade, or induce any voter to vote any particular ticket or for any particular candidate, and that he will not keep or make any memorandum or entry of anything occurring within the booth, and that he will not, directly or indirectly, reveal to any person the name of any candidate voted for by any voter, or which ticket he has voted, or anything occurring within the voting booth, except he be called upon to testify in a judicial proceeding for a violation of the election law." The same oath shall be taken by every voter rendering such assistance, as provided for above, and any violation of this oath shall be a felony punishable upon conviction by imprisonment in a state prison for not less than two nor more than ten years.

No voter shall otherwise ask or receive the assistance of any person within the polling place in the preparation of his ballot, or divulge to any one within the polling place the name of any candidate for whom he intends to vote or has voted.

§ 393. Adoption of voting machine.

The board of elections of the city of New York, the common council of any other city, the town board of any town, or the board of trustees of any village may adopt for use at elections any kind of voting machine approved by the state board of voting machine commissioners, or the use of which has been specifically authorized by law; and thereupon such voting machine may be used at any or all elections held in such city, town or village, or in any part thereof, for voting, registering and counting votes cast at such elections. Voting machines of different kinds may be adopted for different districts in the same city, town or village.

§ 394. Experimental use of voting machine.

The authorities of a city, town or village authorized by the last section to adopt a voting machine may provide for the experimental use, at an election in one or more districts, of a machine which it might lawfully adopt, without a formal adoption thereof; and its use at such election shall be as valid for all purposes as if it had been lawfully adopted.

§ 395. Providing machines.

The local authorities adopting a voting machine shall, as soon as practicable thereafter, provide for each polling place one or more voting machines in complete working order, and shall thereafter preserve and keep them in repair, and shall have the custody thereof and of the furniture and equipment of the polling place when not in use at an election. If it shall be impracticable to supply each and every election district with a voting machine or voting machines at any election following such adoption, as many may be sup-

plied as it is practicable to procure, and the same may be used in such election district or districts within the city, town or village as the officers adopting the same may direct.

§ 396. Payment for machines.

The local authorities, on the adoption and purchase of a voting machine, may provide for the payment therefor in such manner as they may deem for the best interest of the locality and may for that purpose issue bonds, certificates of indebtedness or other obligations which shall be a charge on the city, town or village. Such bonds, certificates or other obligations may be issued with or without interest, payable at such time or times as the authorities may determine, but shall not be issued or sold at less than par.

IX. EDUCATION LAW—MISCELLANEOUS PROVISIONS.

(Chapter 16 of the Consolidated Laws.)

§ 69. Colleges may construct water-works and sewer systems.

1. Every incorporated college in this state is duly authorized and empowered to construct and maintain a system of water-works for the purpose of supplying its college buildings and premises with pure and wholesome water for domestic, sanitary and fire purposes, and for the preservation of the health of its students, faculty and employees, and for the preservation of the public health of the town, village or city in or near which such college is located, and the construction and maintenance of such waterworks is declared to be a public use. Such water-works as often as necessary, may be enlarged or improved. Every such incorporated college owning its water-works system and having an adequate supply of water therefrom, may furnish water to persons other than students, faculty and employees of such college at and for a just and adequate compensation, providing that they reside within a sewer district now created in which the premises of the said college or any part thereof are embraced, and provided no municipal or private public service corporation operates or maintains a system of water-works therein capable of supplying water to such inhabitants. Whenever any such college shall extend its mains along any streets, avenues or highways for the purpose of supplying water to such inhabitants, it shall not lose its exemption from taxation by reason thereof, and shall not be deemed to be exercising a public or corporate franchise within the meaning of the tax law.

Amended by L. 1913, Ch. 422. In effect Apr. 30, 1913.

2. Any such college shall have the right to acquire real estate, or any interest therein, necessary or proper for such water-works, and the right to lay, relay, repair and maintain conduit and water pipes, with connections and fixtures, on, through, and over the lands of others; the right to intercept and divert the flow of waters from the lands of riparian owners, and from persons owning and interested in any waters; and the right to prevent the flow or drainage of noxious, or impure, or unwholesome matter from the lands of others into its reservoirs, or sources of supply. But no such college shall ever have power to take or use water from any of the lands of this state, or any land, reservoir, or feeders, or any streams which have been taken by the state for the purpose of supplying the canals with water. The consent of an incorporated village or city must be obtained to lay any such pipes in or through its streets, and such consent may be accompanied by such reasonable conditions or restrictions as are proper.

3. Such college may cause such examinations and surveys for its proposed water-works to be made as may be necessary to determine the proper location thereof, and for such purpose, by its officers, agents and servants, may enter upon any lands or waters in the vicinity for the purpose of making such examinations and surveys, subject to liability for all damage done. When surveys or examinations are made or concluded, a map shall be made of the lands or interests to be taken or entered upon, and on which the land or interest of each owner or occupant shall be designated, and all streets and roads in which it is proposed to lay conduit pipes, with the proposed line thereof, which map shall be dated and signed by the engineer making the same; and said map shall be filed and kept in the college library for examination and reference, and a duplicate thereof shall be filed in the clerk's office in each county wherein any of such lands or interests proposed to be taken are located. Such examinations and surveys may be ordered and directed by the president, or acting president, and a majority of the faculty of such college. A majority of the trustees shall determine upon the construction of such water-works and the plans thereof, and order contracts therefor to be made by such officers of the college as may be designated.

4. If any such college shall be unable to agree upon such terms of purchase of any such property, right or easements, before or after plans shall

be determined upon, it may, after such plans have been adopted, acquire the same by condemnation, according to the provisions of the condemnation law.

5. When any such college has constructed and completed water-works, as above provided, it may, by a majority of its trustees, determine upon and construct a sewer system; and may connect the same with the sewer system of the village or city in or near which said college is situated, if such connection is practicable. Examination, surveys and a map may be made as above provided. Lands and easements may be acquired by purchase, as above provided, and in case such acquisition can not be made by purchase then they may be acquired by condemnation, according to the provisions of the condemnation law.

§ 1117. Public and free libraries and museums.

All provisions of this section and of sections ten hundred and twenty-eight to ten hundred and forty-four inclusive shall apply equally to libraries, museums, and to combined libraries and museums, and the word "library" shall be construed to include reference and circulating libraries and reading-rooms.

§ 1118. Establishment.

By majority vote at any election, any county, city, village, town, school district, or other body authorized to levy and collect taxes, or by vote of its common council, or by action of a board of estimate and apportionment or other proper authority, any city, or by vote of its trustees, any village, may establish and maintain a free public library, with or without branches, either by itself or in connection with any other body authorized to maintain such library. Whenever twenty-five taxpayers shall so petition, the question of providing library facilities shall be voted on at the next election or meeting at which taxes may be voted, provided that due public notice shall have been given of the proposed action. A municipality or district named in this section may raise money by tax to establish and maintain a public library or libraries, or to provide a building or rooms for its or their use, or to share the cost as agreed with other municipal or district bodies, or to pay for library privileges under a contract therefor. It may also acquire real or personal property for library purposes by gift, grant, devise or condemnation, and may take, buy, sell, hold and transfer either real or personal property and administer the same for public library purposes. A board of supervisors of a county may contract with the trustees of a public library within such county or with any other municipal or district body having control of such a library to furnish library privileges to the people of the county, under such terms and conditions as may be stated in such contract. The amount agreed to be paid for such privileges under such contract shall be a charge upon the county and shall be paid in the same manner as other county charges.

Amended by L. 1911, ch. 815.

§ 1119. Acceptance of conditional gift.

By majority vote at any election any municipality or district or by three-fourths vote of its council, any city, or any public library in the university, or any designated branch thereof, if so authorized by such vote of a municipality, district, or council, or of any combination of such voting bodies, may accept gifts, grants, devises or bequests for public library purposes on condition that a specified annual appropriation shall thereafter be made, by the municipality or district or combination so authorizing such acceptance, for maintenance of such library or branches thereof. Such acceptance, when approved by the regents of the university under seal and recorded in its books of charters, and in a school not subject to their visitation when approved by the commissioner of education, shall be a binding contract, and

such municipality and district shall levy and collect yearly the amount provided in the manner prescribed for other taxes, and shall maintain any so accepted gift, grant, devise or bequest, intact and make good any impairment thereof.

§ 1120. Subsidies.

By vote similar to that required by sections ten hundred and twenty-eight and ten hundred and twenty-nine, money may be granted toward the support of libraries not owned by the public but maintained for its welfare and free use; provided, that such libraries shall be subject to the inspection of the regents and registered by them as maintaining a proper standard, that the regents shall certify what number of the books circulated are of such a character as to merit a grant of public money, and that the amount granted yearly to libraries on the basis of circulation shall not exceed ten cents for each volume of the circulation thus certified by the regents.

§ 1121. Closing of museum; admission fee during certain hours.

The trustees of any institution supported under this chapter by public money, in whole or in part, may, so far as consistent with free use by the public at reasonable or specified hours, close any of its museum collections at certain other hours, for study, to meet the demands of special students or for exhibition purposes, and may charge an admission fee at such hours, provided that all receipts from such fees shall be paid into the treasury and be used for the maintenance or enlargement of the institution.

§ 1122. Taxes.

Taxes, in addition to those otherwise authorized, may be voted by any authority named in section eleven hundred and eighteen and for any purpose specified in sections eleven hundred and eighteen to eleven hundred and twenty inclusive, and shall, unless otherwise directed by such vote, be considered as annual appropriations therefor till changed by further vote, and shall be levied and collected yearly, or as directed, as are other general taxes; and all moneys received from taxes or other sources for such library shall be kept as a separate library fund by the treasurer of the municipality or district making the appropriation and shall be expended only under direction of the library trustees on properly authenticated vouchers, except that money received from taxes for the support of a library not owned by the public but maintained for its welfare and free use shall be paid over to the treasurer of the corporation maintaining such library upon the written demand of its directors or trustees.

(Amended by L. 1918, ch. 113, in effect April 3, 1918.)

§ 1123. Trustees.

Free public libraries established by action of the voters or their representatives shall be managed by trustees who shall have all the powers of trustees of other educational institutions of the university as defined in this chapter; provided, unless otherwise specified in the charter, that the number of trustees shall be five, except that in a town there shall be six; that they shall be elected by the legal voters, except that in cities they shall be appointed by the mayor with the consent of the common council, from citizens of recognized fitness for such position; that the first trustees determine by lot the year in which the term of office of each trustee shall expire and that a new trustee shall be elected or appointed annually to serve for five years, except that in a town two new trustees shall be elected biennially to serve for six years.

(Amended by L. 1918, ch. 113, in effect April 3, 1918.)

§ 1124. Incorporation.

Within one month after taking office, the first board of trustees of any such free public library shall apply to the regents for a charter in accordance with the vote establishing the library.

§ 1125. Use of free public libraries.

Every library established under sections ten hundred and twenty-eight and ten hundred and twenty-nine of this chapter shall be forever free to the inhabitants of the locality which establishes it, subject always to rules of the library trustees, who shall have authority to exclude any person who wilfully violates such rules; and the trustees may, under such conditions as they think expedient, extend the privileges of the library to persons living outside such locality.

§ 1126. Reports.

Every library or museum which receives state aid or enjoys any exemption from taxation or other privilege not usually accorded to business corporations shall make the report required by section ten hundred and ninety-six of this chapter, and such report shall relieve the institution from making any report now required by statute or charter to be made to the legislature, or to any department, court or other authority of the state. These reports shall be summarized and transmitted to the legislature by the regents with the annual reports of the state library and state museum.

§ 1127. Injuries to property.

Whoever intentionally injures, defaces or destroys any property belonging to or deposited in any incorporated library, reading-room, museum or other educational institution, shall be punished by imprisonment in a state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

§ 1128. Detention.

Whoever wilfully detains any book, newspaper, magazine, pamphlet, manuscript or other property belonging to any public or incorporated library, reading-room, museum or other educational institution, for thirty days after notice in writing to return the same, given after the expiration of the time which by the rules of such institution, such article or other property may be kept, shall be punished by a fine of not less than one nor more than twenty-five dollars, or by imprisonment in the jail not exceeding six months, and the said notice shall bear on its face a copy of this section.

§ 1129. Transfer of libraries.

Any corporation, association, school district or combination of districts may, by legal vote duly approved by the regents, transfer, conditionally as provided in section ten hundred and twenty-nine of this article, or otherwise, the ownership and control of its library, with all its appurtenances, to any municipality, or district, or public library in the university, or any designated branch thereof, and thereafter such transferee shall be entitled to receive any money, books or other property from the state or other sources,

to which the transferring body would have been entitled but for such transfer, and the trustees or body making the transfer shall thereafter be relieved of all responsibility pertaining to property thus transferred.

§ 1130. Local neglect.

If the local authorities of any library supported wholly or in part by state money, fail to provide for the safety and public usefulness of its books, the regents shall in writing notify the trustees of said library what is necessary to meet the state's requirements, and on such notice all its rights to further grants of money or books from the state shall be suspended until the regents certify that the requirements have been met; and if said trustees shall refuse or neglect to comply with such requirements within sixty days after service of such notice, the regents may remove them from office and thereafter all books and other library property wholly or in part paid for from state money shall be under the full and direct control of the regents who, as shall seem best for public interests, may appoint new trustees to carry on the library, or may store it, or distribute its books to other libraries.

§ 1131. Loans of books from state.

Under such rules as the regents may prescribe, they may lend from the state library, duplicate department, or from books specially given or bought for this purpose, selections of books for a limited time to any public library in this state under visitation of the regents, or to any community not yet having established such library, but which has conformed to the conditions required for such loans.

§ 1132. Advice and instruction from state library officers.

The trustees or librarian or any citizen interested in any public library in this state shall be entitled to ask from the officers of the state library any needed advice or instruction as to a library building, furniture and equipment, government and service, rules for readers, selecting, buying, cataloguing, shelving, lending books, or any other matter pertaining to the establishment, reorganization or administration of a public library. The regents may provide for giving such advice and instruction either personally or through printed matter and correspondence, either by the state library staff or by a library commission of competent experts appointed by the regents to serve without salary. The regents may, on request, select or buy books, or furnish them instead of money apportioned, or may make exchanges and loans through the duplicate department of the state library. Such assistance shall be free to residents of this state as far as practicable, but the regents may, in their discretion, charge a proper fee to nonresidents or for assistance of a personal nature or for other reason not properly an expense to the state, but which may be authorized for the accommodation of users of the library.

§ 1133. Apportionment of public library money.

Such sum shall have been appropriated by the legislature as public library money shall be paid annually by the treasurer, on the warrant of the comptroller, from the income of the United States deposit fund, according to an apportionment to be made for the benefit of free libraries by the regents in accordance with their rules and authenticated by their seal; provided, that none of this money shall be spent for books except those approved or selected

and furnished by the regents; that no locality shall share in the apportionment unless it shall raise and use for the same purpose not less than an equal amount from taxation or other local sources; that for any part of the apportionment not payable directly to the library trustees the regents shall file with the comptroller proper vouchers showing that it has been spent in accordance with law exclusively for books for free libraries or for proper expenses incurred for their benefit; and that books paid for by the state shall be subject to return to the regents whenever the library shall neglect or refuse to conform to the ordinances under which it secured them.

§ 1134. Abolition.

Any library established by public vote or action of school authorities, or under sections ten hundred and twenty-eight and ten hundred and twenty-nine of this chapter, may be abolished only by a majority vote at a regular annual election, ratified by a majority vote at the next annual election. If any such library is abolished its property shall be used first to return to the regents, for the benefit of other public libraries in that locality, the equivalent of such sums as it may have received from the state or from other sources as gifts for public use. After such return any remaining property may be used as directed in the vote abolishing the library, but if the entire library property does not exceed in value the amount of such gifts it may be transferred to the regents for public use, and the trustees shall thereupon be free from further responsibility. No abolition of a public library shall be lawful till the regents grant a certificate that its assets have been properly distributed and its abolition completed in accordance with law.

ARTICLE 46.*

Divisions of History and Public Records

Section 1190. Divisions created.

- 1191. Functions of the division of history.
- 1192. Powers of regents in respect to public records and historical documents, et cetera.
- 1193. General duties of supervisor of public records.
- 1194. What are public records.
- 1195. Functions of the division of public records.
- 1196. Safeguarding of public records.
- 1197. Destruction of public records.
- 1198. Penalty.

§ 1190. Divisions created.

The division of public records and the division of history in the education department, and the offices of supervisor of public records and state historian, as created and continued by chapter three hundred and eighty of the laws of nineteen hundred and eleven, are hereby continued as so constituted, with the powers and duties herein prescribed. Such divisions and officers and the employees thereof shall be subject to the same provisions of law and rules as the other divisions and employees of the education department.

§ 1191. Functions of the division of history.

It shall be the function of the division of history, subject to the regulations of the regents, to collect, collate, compile, edit and prepare for publication all official records, memoranda, statistics and data relative to the history of the colony and state of New York.

* Entire article added by L. 1914, ch. 424. In effect Apr. 30, 1913.

It shall also be the function of the division of history in collaboration with the division of public records, when authorized by the commissioner of education so to do, to collate, compile, edit and prepare for publication as above, the official records, archives or papers of any of the civil subdivisions of the state.

And it shall further be the function of the division of history to collate, compile, edit and prepare for publication as above such archives, records, letters and manuscripts, belonging to the state or any of its officers or departments, or to any historical or patriotic society or association chartered by the regents or by statute law, or any other archives, records, papers and manuscripts, as in the judgment of the state historian but by authority of the commissioner of education, it shall be deemed for the best interests of the state to publish, for the preservation of the state's history.

§ 1192. Powers of regents in respect to public records and historical documents, et cetera.

The education department, pursuant to the education law, shall, on and after October first, nineteen hundred and eleven, have general and exclusive supervision, care, custody and control of all public records, books, pamphlets, documents, manuscripts, archives, maps and papers of any public office, body, board, institution or society now extinct, or hereafter becoming extinct, the supervision, care, custody and control of which are not already or shall not hereafter be otherwise provided for by law.

Such department shall take such action as may be necessary to put the records hereinabove specified, except as aforesaid, in the custody and condition contemplated by the various laws relating thereto and shall provide for their restoration and preservation, and cause copies thereof to be made whenever by reason of age, use, exposure or any casualty, such copies shall in their judgment be necessary. Whenever such copy is made, and after it has been compared with the original, it shall be certified by the official person, board or officer having the legal custody and control of said original, and shall thereafter be considered and accepted as evidence and, for all other purposes, the same as the original could be; provided that the original shall be thereafter cared for and preserved, the same as if no such copy had been made, for such examination as may be directed by an order of court in any action or proceeding in which the accuracy of the copy is questioned.

The officers of any county, city, town or village or other political division of the state or of any institution or society created under any law of the state may transfer to the regents records, books, pamphlets, manuscripts, archives, maps, papers and other documents which are not in general use, and it shall be the duty of the regents to receive the same and to provide for their custody and preservation.

§ 1193. General duties of supervisor of public records.

The supervisor of public records shall examine into the condition of the records, books, pamphlets, documents, manuscripts, archives, maps and papers kept, filed or recorded, or hereafter to be kept, filed or recorded in the several public offices of the counties, cities, towns, villages or other political divisions of the state, and all other public records, books, pamphlets, documents, manuscripts, archives, maps and papers heretofore or hereafter required by law to be kept by any public body, board, institution or society, created under any law of the state in said counties, cities, towns, villages or other political divisions of the state, except where the same conflicts with the present duties and office of the commissioner of records in the county of Kings and the commissioner of records in the county of New York.

§ 1194. What are public records.

In construing the provisions of this chapter and other statutes, the words "public records" shall, unless a contrary intention clearly appears, mean any written or printed book or paper, or map, which is the property of the state, or of any county, city, town or village or part thereof, and in or on which any entry has been made or is required to be made by law, or which any officer or employee of the state or of a county, city, town or village has received or is required to receive for filing.

All public records inscribed by public officials, other than maps, shall be entered or recorded in durable ink on linen paper durably made and well finished.

§ 1195. Functions of the division of public records.

It shall be the duty of the division of public records to take all necessary measures for the proper inscription, the retrieval, the care and the preservation of all public records in the various political divisions of the state, except as described in section eleven hundred and ninety-three.

The division of public records shall advise with and recommend to public officers hereinbefore described, as to the methods of inscribing, as to the materials used in, and as to the safety and preservation of all public records. The recommendations of the division of public records may be enforced by an order issued by a justice of the supreme court upon application of the commissioner of education, either with or without notice to the proper public officer, as such justice may require.

§ 1196. Safeguarding of public records.

Every person who has the custody of any public record books of a county, city, town or village shall, at its expense, cause them to be properly and substantially bound. He shall have any such books which may have been left incomplete, made up and completed from the files and usual memoranda, so far as practicable.

Officers or boards in charge of the affairs of counties, cities, towns and villages shall provide and maintain fireproof rooms, vaults, safes or other fire-resisting receptacles made of noncombustible materials, of ample size for the safe-keeping of the public records in their care, and shall furnish such rooms only with fittings of noncombustible material, the cost to be a charge against such county, city, town or village. All such records shall be kept in the buildings in which they are ordinarily used, and so arranged that they can be conveniently examined and referred to. When not in use, they shall be kept in the vaults, safes or other fire-resisting receptacles provided for them.

§ 1197. Destruction of public records.

No officer of the state or of any county, city, town or village or other political division of the state, or of any institution or society created under any law of the state, shall destroy, sell or otherwise dispose of any public record, original or copied, or of any archives, in his care or custody or under his control, and which are no longer in current use, without first having advised the commissioner of education of their nature and obtained his consent.

§ 1198. Penalty.

A public officer who refuses or neglects to perform any duty required of him by this chapter or to comply with a recommendation of the commissioner of education under the authority of this act, shall for each month of such neglect or refusal, be punished by a fine of not less than twenty dollars.

§ 2. Chapter three hundred and eighty of the laws of nineteen hundred and eleven is hereby repealed. Article forty-six of such chapter twenty-one of the laws of nineteen hundred and nine, entitled "An act relating to education, constituting chapter sixteen of the consolidated laws," is hereby renumbered article forty-seven, and sections eleven hundred and ninety, eleven hundred and ninety-one and eleven hundred and ninety-two thereof are renumbered respectively twelve hundred, twelve hundred and one and twelve hundred and two.

X. HIGHWAY LAW—MISCELLANEOUS PROVISIONS.

(Chapter 25 of the Consolidated Laws.)

§ 1. Short title.

This chapter shall be known as the "Highway Law."

§ 2. Definitions.

1. The term "department," when used in this chapter, shall mean the department of highways, as constituted herein.

2. The terms "commission," "highway commission," and "state highway commission," when so used, shall each mean the state commission of highways. The term "state superintendent of highways," when so used, shall mean the commissioner of highways, and reference to powers and duties of the state superintendent of highways to be exercised subject to the commission shall mean the exercise of such powers and duties by the commissioner of highways without the concurrence of any other commission or officer.

3. The term "district superintendent" or "county superintendent," when so used, shall mean the district superintendent of highways or county superintendent of highways, respectively.

4. The term "town superintendent," when so used, shall mean the town superintendent of highways.

5. A highway within the provisions of this chapter shall be deemed to include necessary culverts, sulices, drains, ditches, waterways, embankments, retaining walls and all bridges having a span of five feet or less.

Amended by L. 1911, ch. 646; L. 1912, ch. 83; L. 1913, ch. 80. In effect Mar. 14, 1913.

§ 3. Classification of highways.

Highways are hereby divided into four classes.

1. State highways are those constructed or improved under this chapter at the sole expense of the state, including those highways specified and described in section one hundred and twenty of the highway law and acts amendatory thereof.

2. County highways are those heretofore or hereafter constructed or improved at the joint expense of state, county and town, or state and county, as provided by law, except those highways specified and described in section one hundred and twenty of this chapter.

3. County roads are those designated as such under a general or special law and constructed, improved, maintained and repaired by the county as such, in counties in which the county road system has been or may be adopted.

4. Town highways are those constructed, improved or maintained by the town with the aid of the state, under the provisions of this chapter, including all highways in towns, outside of incorporated villages constituting separate road districts, which do not belong to either of the two preceding classes.

Amended by L. 1910, ch. 567; L. 1912, ch. 83. In effect April 2, 1912.

§ 137. State and county highways in villages.

A state or county highway may be constructed through a village, unless the street through which it runs has, in the opinion of the commission, been so improved or paved as to form a continuous and improved highway of sufficient permanence as not to warrant its reconstruction, in which case such highway shall be constructed or improved to the place where such paved or improved street begins. A state or county highway within a village shall be of the same width and type of construction as the highway outside of the village which connects with the highway within the village, unless a greater width or different type of construction is desired by the municipality, in which case the board of trustees of such village shall by resolution petition the commission to provide the width and type of construction desired. The additional expense caused by the increased width or different type of construction or both shall be borne wholly by the village. The commission shall, in its discretion, upon receipt of such petition, if filed prior to the advertisement for bids, provide for the width and type of construction described in such petition. Whenever the commission shall have approved such a village petition the plans, specifications and estimates of cost, together with an estimate showing the additional cost to be borne by the village, to provide for the greater width or different type of construction or both, shall be submitted to the board of trustees who, if it approve such plans, specifications and estimate of cost, shall by resolution appropriate the funds necessary to provide for the portion of the cost of construction to be borne by the village. Such fund shall, prior to the award of the contract, be deposited by the village with the state comptroller subject to the draft or requisition of the state commission of highways, and a certified copy of the resolution shall be filed with the commission. The moneys so required shall be raised by tax or from the issue and sale of bonds as provided in the village law. Upon the completion of a highway within a village where a portion of the cost is borne by the village the commission shall transmit to the board of trustees a statement showing the actual cost of the additional width or changed construction including a proportionate charge for engineering, and shall notify the village clerk that it will accept the work within twenty days from the date of such notice, unless protest in writing against the acceptance shall be filed by such clerk with the commission. In case a protest is filed the commission shall hear the same and if it is sustained the commission shall delay the acceptance of the highway or section thereof until the same be properly completed. If no protest is filed the highway or section thereof shall at the expiration of the said twenty days be deemed finally completed and accepted on behalf of the village and the state, and shall thereafter be maintained in the manner provided in this chapter for the maintenance and repair of state and county highways. The provisions of the village law, special village charters and other general or special laws relative to the pavement or improvement of streets and the assessment and payment of the cost thereof shall apply, as far as may be, to such additional construction and the assessment and payment of the cost thereof, except that the provisions of any general or local act affecting the pavement or improvement of streets or avenues is any

village and requiring the owners, or any of the owners, of the frontage on a street to consent to the improvement or pavement thereof, or requiring a hearing to be given to the persons who, or whose premises, are subject to assessment, upon the question of doing such paving or making such improvement shall not apply to the portion of the improvement or pavement of a state or county highway the expense for which is required to be paid by the village to the state.

The provisions of this act shall not prevent the improvement by state aid under the statute as it existed prior to the passage of this act, of streets in cities of the second and third class, where, prior to the passage of this act, highway numbers had been assigned as provided by article six of this act; nor shall the provisions of this act prevent the improvement in such cities of streets heretofore petitioned for and approved, in cases where the proposed improvement of each street does not exceed one and one-half miles in length; but the total mileage of all such streets not exceeding one and one-half miles in length, shall not in the aggregate exceed four miles.

Wherever plans for such improvement in a city of the second class have been approved and a highway number assigned, and the work is ready for contract as hereinbefore described and the common council of such city has appropriated and made available the city's share of the cost of such improvement, the city treasurer of such city is hereby authorized and empowered to borrow a sufficient amount in anticipation of the collection thereof, and to pledge the faith and credit of the city for the payment of such amount when due, with interest, and is further authorized, empowered and directed to deposit such moneys with the state comptroller in the same manner as is provided by this section with regard to the improvement of village streets.

Amended by L. 1910, Ch. 233; L. 1911, Ch. 88; L. 1912, Ch. 88; L. 1913, Chs. 131, 319, and L. 1916, Ch. 571, in effect May 15, 1916.

§ 138. Connecting highways in village.

The board of trustees of a village may, by resolution, petition the commission for the construction or improvement of a highway to connect streets or highways within the village which have been paved or improved with county highways which have been heretofore built under the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof. If in the judgment of the commission public convenience requires the construction or improvement of such connecting highway, the commission shall cause plans, specifications and estimates to be prepared, and shall cause the same to be transmitted to the board of supervisors of the county wherein such highway is situated. The board of supervisors shall thereupon adopt a resolution providing for such construction or improvement as provided in this article. The payment of the cost of such construction or improvement shall be provided for in such resolution and such payment shall be made in the same manner as provided for other county highways. A certified copy of such resolution shall be filed in the office of the commission. The construction or improvement of such connecting highway shall then be taken up in the order and manner provided

in this article for the construction or improvement of county highways. If it is desired to construct or improve any portion of such a connecting highway at a width greater than that provided for in the plans and specifications therefor, or if a modification of such plans and specifications is desired by which the cost thereof will be increased, the board of trustees of the village shall proceed as in the preceding section to secure such a modification of the plans and specifications as will provide for such desired construction. The provisions of the preceding section shall apply in like manner to the connecting highway to be constructed or improved as provided in this section.

The provisions of this act shall not prevent the improvement by state aid under the statute as it existed prior to the passage of this act, of streets in cities of the second and third class, where, prior to the passage of this act, highway numbers had been assigned as provided by article six of this act; nor shall the provisions of this act prevent the improvement in such cities of streets heretofore petitioned for and approved in cases where the proposed improvement of each street does not exceed one and one-half miles in length; but the total mileage of all such streets not exceeding one and one-half miles in length shall not in the aggregate exceed four miles.

Wherever plans for such improvement in a city of the second class have been approved and a highway number assigned, and the work is ready for contract as hereinbefore described and the common council of such city has appropriated and made available the city's share of the cost of such improvement, the city treasurer of such city is hereby authorized and empowered to borrow a sufficient amount in anticipation of the collection thereof, and to pledge the faith and credit of the city for the payment of such amount when due, with interest, and is further authorized, empowered and directed to deposit such moneys with the state comptroller in the same manner as is provided by this section with regard to the improvement of village streets.

Amended by L. 1911, Ch. 88; L. 1912, Ch. 88, and L. 1916, Ch. 570, in effect May 15, 1916.

§ 170. Commission to provide for maintenance and repair.

The maintenance and repair of improved state and county highways in towns and incorporated villages, exclusive, however, of the cost of maintaining and repairing bridges having a span of five feet or over, shall be under the direct supervision and control of the commissioner of highways and he shall be responsible therefor. Such maintenance and repair may be done in the discretion of the commissioner either directly by the department of highways or by contract awarded to the lowest responsible bidder at a public letting after due advertisement, and under such rules and regulations as the commissioner of highways may prescribe. The commissioner of highways shall also have the power to adopt such system as may seem expedient so that each section of such highways shall be under constant observation and be effectively and economically preserved, maintained and repaired. The commissioner of highways shall have the power to purchase materials for such maintenance and repairs, except where such work is done by contract, and contract for the delivery thereof at convenient intervals along such highways.

Amended by L. 1911, Ch. 646; L. 1912, Ch. 83; L. 1913, Ch. 80, and L. 1916, Ch. 578, in effect May 17, 1916.

§ 171. Appropriations by state; apportionment of moneys.

There shall be annually appropriated for the maintenance and repair of improved state and county highways an amount sufficient to provide therefor, based upon the estimates prepared and submitted by the commission to the legislature as provided in section twenty-three of this chapter. Not less than ninety per centum of the amount so appropriated shall be apportioned by the commission each year among the counties in accordance with the proportion which the amount to be apportioned bears to the total amount of such estimates. The comptroller, upon the requisition of the commission, shall draw his warrant upon the state treasurer in favor of the county treasurer of the county in which the improved state or county highways are located, for an amount which shall not be in excess of the total amount apportioned by the commission to such county. The moneys so paid shall be deposited by the county treasurer to the credit of the fund for the maintenance of improved state and county highways in the county. Any moneys so deposited and placed to the credit of the fund for such maintenance shall be available and subject to the order of the state highway commission at any time prior to the total expenditure thereof. Not more than ten per centum of the amount so appropriated each year may be reserved by the commission for the repair or rebuilding of improved state or county highways, which ten per centum shall not be deemed to be available until after the moneys paid the county treasurer of a county as heretofore provided shall have been expended, and which shall be paid by the state treasurer upon the warrant of the comptroller drawn upon the requisition of the commission issued when required for such purposes.

Amended by L. 1912, Ch. 83, and L. 1916, Ch. 578, in effect May 17, 1916.

§ 172. Cost to town for maintenance of state and county highways.

Each town shall pay for the maintenance and repair of state and county highways each year the sum of fifty dollars for each mile or major fraction of a mile of the total mileage of state and county highways within the town, each incorporated village shall pay for such maintenance and repair at the rate of one and one-half cents for each square yard of surface of such improved highway maintained by the state within its corporate limits; except where a maintenance bond for a period of five years satisfactory in form and sufficiency to the commission shall have been given to the village prior to January first, nineteen hundred and sixteen, such tax herein provided for shall not be levied or paid until the period covered by such maintenance bonds shall have expired, or shall have failed in sufficiency.

On or before the first day of November in each year the commission shall transmit to the clerk of the board of supervisors of each county and to the board of trustees of each village a statement specifying the number of miles of improved state and county highways in each town, the number of square yards of surface of such improved highway as hereinbefore provided in each

village in such county and the amount which each of such towns and villages is required to pay into the county treasury on account of the maintenance of state and county highways and a copy of such statements shall be forwarded to the county treasurer. The board of supervisors of the county and the board of trustees of an incorporated village shall cause the amount to be paid by each town and incorporated village of the county, to be assessed, levied and collected therein in the same manner as other town and village charges, in the several towns and villages and such amount when collected shall be paid into the county treasury to the credit of the fund for the maintenance of state and county highways in the several towns and incorporated villages of the county.

Amended by L. 1912, Ch. 83; L. 1915, Ch. 551; L. 1916, Ch. 578, and L. 1917, in effect April 2, 1917.

§ 173. Disbursement of maintenance funds.

The amount apportioned by the commission for the maintenance and repair of state and county highways in each county shall be expended for the repair and maintenance of such highways in such county, but the amount paid by each town or incorporated village as provided by section one hundred and seventy-two shall be expended for the repair and maintenance of such highways in such town or incorporated village. The county treasurer shall pay out the moneys received by him as provided in this article upon the written order of the representative of the commission, who, before drawing any such orders shall give a bond in an amount to be specified by the commission, and with such sureties as shall be approved by the commission; such bond shall be filed in the office of the state comptroller and certified copy thereof filed in the office of the state highway commission and in the office of the county treasurer. Such orders shall be issued upon vouchers duly presented to the representative of the commission in the form to be prescribed by it. The commission may adopt rules and regulations providing for the presentation and payment of accounts for maintenance and repair.

Amended by L. 1912, Ch. 83, and L. 1916, Ch. 578, in effect May 17, 1916.

§ 174. Reports of county treasurer.

The county treasurer shall report to the commission annually and at such other times as required by the commission, the amount received by him on account of the maintenance and repair of improved state and county highways in the several towns and incorporated villages in his county and the expenditures made by him out of such moneys. The form and contents of such report shall be prescribed by the commission.

Amended by L. 1912, Ch. 83, and L. 1916, Ch. 578, in effect May 17, 1916.

§ 176. Liability of state for damages.

The state shall not be liable for damages suffered by any person from defects in state and county highways, except such highways as are maintained by the state by the patrol system, but the liability for such damages shall otherwise remain as now provided by law, notwithstanding the construction or improvement and maintenance of such highways by the state under this chapter; but nothing herein contained shall be construed to im-

pose on the state any liability for defects in bridges over which the state has no control. Within the limits of incorporated villages the state shall maintain a width of pavement equal to the width of pavement constructed or improved at the expense of the state, if a state highway, or of the state and county, if a county highway, the location of the state's portion of such roadway within said incorporated limits to be determined by the center line of the roadway as shown on the plans on file with the state highway department, and the state shall be liable for damages to persons or property only when such damages shall occur as a result of the defective condition of the portion of improved highway as above described.

Amended by L. 1910, Ch. 570; L. 1912, Ch. 83, in effect April 2, 1912.

§ 177. Additional width or different type of construction under repair contracts.

Whenever in the maintenance and repair of state and county highways the commission shall have determined upon the necessity of resurfacing such highway, the town or village wherein the highway is located may petition the commission to provide an additional width or a different type of pavement, or both, in the plans providing for such resurfacing. The additional expense of such widening or different type of construction shall be borne wholly by such town or village and the provisions of sections one hundred and thirty-seven and one hundred and thirty-eight-a shall apply to such additional width or different type of construction under such repair contract in the same manner as under a construction contract as provided in those sections.

Former section 177 repealed by L. 1912, Ch. 83, and new section added by L. 1916, Ch. 578, in effect May 17, 1916.

§ 204. When officers of different towns disagree about highway.

When the town superintendent of any town or officers of any village or city having the powers of town superintendents shall differ with the town superintendent or superintendents of any other town or with the officers of such a village or city having the powers of town superintendents in the same county, relating to the laying out of a new highway or altering an old highway, extending into both towns, or a town and a village or city, or upon the boundary line between such towns or such town and a village or city, or when a town superintendent of a town in one county shall differ with the town superintendent of a town or the officers of a village or city having the powers of town superintendents in another county, relating to the laying out of a new highway, or the altering of an old highway, which shall extend into both counties, or be upon the boundary line between such counties, the town superintendents of both towns or the officers of the village or city having such powers shall meet on five days' written notice, specifying the time and place, within some one of such towns, villages or cities, given by either of such town superintendents, or officers having powers of town superintendents, to make their determination in writing, upon the subject of their differences. If they can not agree, they or either of them may certify the fact of their disagreement to the county court of that county, if the proposed highway is all in one county, or if in different

counties, or if the county judge is disqualified or unable to act, to the supreme court; such court shall thereupon appoint three commissioners, freeholders of the county, not residents of the same town, village or city, where the highway is located; or if between two counties, then freeholders of another county, who shall take the constitutional oath of office, and upon due notice to all persons interested view the proposed highway, or proposed alteration of a highway, administer all necessary oaths, and take such evidence as they deem proper, and shall decide all questions that shall arise on the hearing, as to the laying out or altering of such highway, its location, width, grade and character of roadbed, or any point that may arise relating thereto; and if they decide to open or alter any highway, they shall ascertain and appraise the damages, if any, to the individual owners and occupants of the land through which such new or altered highway is proposed to pass, and shall report such evidence and decision to such court, with their assessment of damages, if any, with all convenient speed. On the coming in of such report, the court may, by order, confirm, modify or set aside the report in whole or in part and may order a new appraisal by the same or by other commissioners, and shall decide all questions that may arise before it. And all orders and decisions in the matter shall be filed in the county clerk's office of each county where the highway is located, and shall be duly recorded therein. This section shall not be so construed as to compel any town or towns to construct, repair or maintain a bridge upon a boundary between towns, where previous to May seventh, nineteen hundred and three, an application had been made to any court, to compel the construction, repair and maintenance of a bridge upon such a boundary line, and such application had been denied.

§ 205. Difference about improvements.

When the town superintendent or the officers of a village or city having the powers of town superintendents therein, shall desire to make a new or altered highway extending beyond the bounds of such town, village or city, a better highway than is usually made for a common highway, with a special grade or roadbed, drainage or improved plan, and are willing to bear the whole or a part of the expense thereof beyond such bounds, but can not agree in regard to the same, upon written application of either of the superintendents or officers, and notice to all parties interested, such court shall make an equitable adjustment of the matters, and may direct that in consideration of the payment of such portion of the additional expense by the town, village or city that desires the improved and better highway, as shall be equitable, its officers, contractors, servants and agents may go into such town, village or city, and make the grade and roadbed, and do whatever may be necessary and proper for the completion of such better highway, advancing the money to do it; the amount of damages to each owner or occupant shall be ascertained and determined by commissioners, who shall be appointed, and whose proceedings shall be conducted in the manner provided by the last preceding section; and upon the coming in of their report of damages, and of the expenses paid, such court shall, on notice to all parties interested, direct that the amount of damages assessed each owner or occupant, if any, and all such

expenses be paid by each, any or all of such towns, villages or cities as shall be just and equitable, and the damages and expenses assessed and allowed, as in this and the last preceding sections, shall be paid and collected as if fixed by the town superintendents of the towns, or the officers of such villages or cities having the powers of such superintendents. Every commissioner appointed as herein provided shall be paid six dollars for each day actually and necessarily employed in such service and necessary expenses.

MOTOR VEHICLES.*

§ 287. Speed permitted by motor vehicles.

Every person operating a motor vehicle on the public highway of this state shall drive the same in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person; provided, that a rate of speed in excess of thirty miles an hour for a distance of one-fourth of a mile shall be presumptive evidence of driving at a rate of speed which is not careful and prudent.

Added by L. 1910, Ch. 374, in effect August 1, 1910.

§ 288. Local ordinances prohibited.

Except as herein otherwise provided, local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring from any owner or chauffeur to whom this article is applicable any tax, fee, license or permit for the use of the public highways, or excluding any such owner or chauffeur from the free use of such public highways, excepting such driveway, speedway or road as has been or may be expressly set apart by law for the exclusive use of horses and light carriages or in any other way respecting motor vehicles or their speed upon or use of the public highways; and no ordinance, rule or regulation contrary to or in anywise inconsistent with the provisions of this article, now in force or hereafter enacted, shall have any effect; provided, however, that the power given to local authorities to regulate vehicles offered to the public for hire, and processions, assemblages or parades in the streets or public places, and all ordinances, rules and regulations which may have been or which may be enacted in pursuance of such powers shall remain in full force and effect; and provided, further, that local authorities may set aside for a given time a specified public highway for speed contests or races, to be conducted under proper restrictions for the safety of the public, and provided, further, that local authorities may exclude motor vehicles from any cemetery or grounds used for the burial of the dead, and may by general rule, ordinance or regulation exclude motor vehicles used solely for commercial purposes from any park or part of a park system where such general rule, ordinance or regulation is applicable equally and generally to all other vehicles used for the same purposes, and provided further that nothing in this article contained shall im-

* **Editor's Note.**—For a full discussion of the rights, duties and liabilities of municipal authorities in this connection see Huddy on Automobiles.

pair the validity or effect of any ordinances, regulating the speed of motor vehicles, or of any traffic regulations with regard to the operation of motor vehicles, heretofore or hereafter made, adopted or prescribed pursuant to law in any city of the first class, or in any city of the second class in a county adjoining a city of the first class; provided, further, that the local authorities of other cities and incorporated villages may limit by ordinance, rule or regulation the speed of motor vehicles on the public highways, such speed limitation not to be in any case less than one mile in four minutes, and the maintenance of a greater rate of speed for one-eighth of a mile shall be presumptive evidence of driving at a rate of speed which is not careful and prudent, and on further condition that each city or village shall have placed conspicuously on each main public highway where the city or village line crosses the same and on every main highway where the rate of speed changes, signs of sufficient size to be easily readable by a person using the highway, bearing the words, "City of ————" or "Incorporated village of ————," "Slow down to — miles" (the rate being inserted), and also an arrow pointing in the direction where the speed is to be reduced or changed, and also on further condition that such ordinance, rule or regulation shall fix the punishment for violation thereof, which punishment shall, during the existence of the ordinance, rule or regulation, supersede those specified in subdivision two of section two hundred and ninety of this chapter but, except in cities of the first or second class, shall not exceed the same. Official copies of all local ordinances passed under the provisions of this section shall be filed with the secretary of state at least thirty days before they shall respectively take effect and a brief summary of all such local ordinances shall be printed in pamphlet form and issued at regular intervals by the secretary of state.

Added by L. 1910, Ch. 374, and amended by L. 1915, Ch. 487, and L. 1916, Ch. 579, in effect May 17, 1916.

§ 291. Disposition of registration fees; fines and penalties.

1. On the first day of each month or within ten days thereafter all fines, penalties or forfeitures collected for violations of any of the provisions of this article or of any act in relation to the use of the public highways by motor vehicles now in force or hereafter enacted, under the sentence or judgment of any court, judge, magistrate or other judicial officer having jurisdiction in the premises, shall be paid over by such court, judge, magistrate or other judicial officer to the treasurer of the state, with a statement accompanying the same, setting forth the action or proceeding in which such moneys were collected, the name and residence of the defendant, the nature of the offense, and the fine, penalty, sentence or judgment imposed. On the first day of each month or within ten days thereafter, every judge, magistrate or clerk of a court having jurisdiction of the violation of any of the provisions of

this article, shall make and forward to the treasurer of the state, a verified report of all criminal actions or proceedings instituted or tried before him or it during the proceeding calendar month for violation of any of the provisions of this article, which report shall set forth the name and address of the defendants, the nature of the offenses and the fines and penalties collected or imposed by such court, judge, magistrate or judicial officer, which report shall be open to inspection during reasonable business hours to any citizen of the state. On or before the first day of February of each year, the treasurer shall transmit to each branch of the legislature a statement showing the amount of the receipts under this article during the preceding fiscal year paid into the state treasury.

2. The secretary of state shall deposit all registration fees collected by him under this article in a responsible bank, banking house or trust company in the city of Albany, which shall pay the highest rate of interest to the state for such deposit, to the credit of the secretary of state on account of the motor vehicle law. Every such bank, banking house or trust company shall execute and file in his office an undertaking to the state, in the sum, and with such sureties, as are required and approved by the secretary of state and comptroller for the safe keeping and prompt payment on legal demand therefor of all such moneys held by or on deposit in such bank, banking house or trust company, with interest thereon on daily balances at such rate as the secretary of state and comptroller may fix. Every such undertaking shall have endorsed thereon or annexed thereto the approval of the attorney-general as to its form. The secretary of state shall on the first day of each month make a verified return to the state treasurer of all registration fees received by him under this article during the preceding calendar month, stating from what county received and by whom and when paid.

3. The secretary of state shall on or before the tenth day of each month pay to the state treasurer fifty per centum of the balance to his credit in such bank, banking house or trust company, on account of registration fees collected under this article, at the close of business on the last day of the preceding month; and from the money so deposited shall pay to the treasurer of each county fifty per centum of the registration fees collected from residents of such county during the preceding calendar month. In the city of New York such payment shall be made through the chamberlain of such city on account of all counties included therein.

4. All moneys paid into the state treasury pursuant to this article shall be appropriated and used for the maintenance and repair of the improved

roads of the state, under the direction of the state commissioner of highways. All money received by the chamberlain of the city of New York, pursuant to this article, shall be paid into the treasury of the city to the credit of the general fund. All moneys received by the county treasurer of any county pursuant to this article, shall be used for the permanent construction or improvement of town highways only in such county as defined by subdivision four of section three of this chapter. The county treasurer shall, upon receipt of such moneys, keep an accurate record thereof, and shall furnish the board of supervisors of the county, upon request by it, with a certified statement of such receipts. The board of supervisors of the county shall, at a regular or special meeting and by a majority vote, allot such moneys to one or more of the towns within such county, and shall by resolution appropriate for the use of such town or towns the moneys so allotted. A certified copy of such resolution shall be filed with the county treasurer of such county, whereupon such county treasurer shall pay to the supervisor of such town or towns the amount to which each is entitled as determined and indicated by such resolution. Before receiving any such moneys the supervisor shall give a bond in accordance with the provisions of section one hundred and four of this chapter. The places and the manner in which such moneys shall be expended shall be determined by the town board and the town superintendent subject to the approval of the state commission of highways in accordance with the provisions of section one hundred and five of this chapter, which shall also govern the method by which such moneys shall be expended. A statement of the receipts and expenditures of such moneys shall be included in the report required by section one hundred and seven of this chapter. The provisions of section one hundred and eight of this chapter shall apply as to the method of keeping accounts, the forms, blanks and orders used, and the filing of records in the town clerk's office.

Added by L. 1910, Ch. 374, and amended by L. 1916, Ch. 577, in effect May 17, 1916.

XI. TAX LAW—MISCELLANEOUS PROVISIONS.

(Chapter 60 of the Consolidated Laws.)

ARTICLE I.**Taxable Property and Place of Taxation.**

- Section**
1. Short title.
 2. Definitions.
 3. Property liable to taxation.
 4. Exemption from taxation.
 5. Taxation of lands sold or leased by the state.
 6. The assessment of real and personal property.
 7. When property of nonresidents is taxable.
 8. Place of taxation of property of residents.
 9. Place of taxation of real property.
 10. Taxation of real property divided by line of tax district.
 11. Place of taxation of property of corporations.
 12. Taxation of corporate stock.
 13. Stockholders of bank taxable on shares.
 14. Place of taxation of individual bank capital.
 15. Report of exempt property.

§ 1. Short title.

This chapter shall be known as the "Tax Law."

§ 2. Definitions.

1. "Tax commission" as used in this chapter means the state tax commission and "tax department" means the state tax department.

2. "Comptroller" as used in this chapter means the state comptroller.

3. "Assessor" as used in this chapter shall be deemed to include any elected or appointed officer of any civil or political subdivision of the state, charged by law with the duty of assessing property for taxation for state, county or local purposes.

4. "Tax district" as used in this chapter means unless otherwise herein provided a city or town of this state.

5. "County treasurer" includes any officer performing the duties devolving upon such office under whatever name.

6. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, crantage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors, and other appurtenances upon, above and under ground; all surface, underground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product

capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways or public places, any mains, pipes, tanks conduits or wires with their appurtenances, for conducting water, steam, heat, light, power, gas, oil or other substance or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the state. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

7. The term "special franchise" shall not be deemed to include the crossing of a street, highway or public place outside the limits of a city or incorporated village where such crossing is less than two hundred and fifty feet in length, unless such crossing be the continuation of an occupancy of another street, highway or public place. This subdivision shall not apply to any elevated railroad.

8. The terms "personal estate," and "personal property," as used in this chapter, include chattels, moneys, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for the payment of money due or owing to persons residing within this state, however secured or wherever such securities shall be held; debts due by inhabitants of this state to persons not residing within the United States for the purchase of any real estate; public stocks, stocks in money corporations, and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

Amended by L. 1916, Ch. 323, in effect April 26, 1916.

§ 3. Property liable to taxation.

All real property within this state, and all personal property situated or owned within this state, is taxable unless exempt from taxation by law.

§ 4. Exemption from taxation.

The following property shall be exempt from taxation:

1. Property of the United States.
2. Property of this state other than its wild or forest lands in the forest preserve.
3. Property of a municipal corporation of the state held for a public use, including real property held or used for cemetery purposes, and all lots and plats therein conveyed by the municipal corporation as places for the burial of the dead, except the portion of municipal property not within the corporation.
4. The lands in any Indian reservation owned by the Indian nation, tribe or band occupying them.
5. All property exempt by law from execution, other than an exempt homestead. But real property purchased with the proceeds of a pension granted by the United States for military or naval services, and owned and occupied by the pensioner, or by his wife or widow, is subject to taxation as herein provided. Such property shall be assessed in the same manner as other real property in the tax districts. At the meeting of the assessors to

hear the complaints concerning assessments, a verified application for the exemption of such real property from taxation may be presented to them by or on behalf of the owner thereof, which application must show the facts on which the exemption is claimed, including the amount of pension money used in or toward the purchase of such property. No such exemption on account of pension money shall be allowed in excess of five thousand dollars. If the assessors are satisfied that the applicant is entitled to the exemption, and that the amount of pension money exempt to the extent authorized by this subdivision used in the purchase of such property equals or exceeds the assessed valuation thereof, they shall enter the word "exempt" upon the assessment-roll opposite the description of such property. If the amount of such pension money exempt to the extent authorized by this subdivision used in the purchase of the property is less than the assessed valuation, they shall enter upon the assessment-roll the words "exempt to the extent of dollars" (naming the amount) and thereupon such real property, to the extent of the exemption entered by the assessors, shall be exempt from state, county and general municipal taxation, but shall be taxable for local school purposes, and for the construction and maintenance of streets and highways. If no application for exemption be granted, the property shall be subject to taxation for all purposes. The entries above required shall be made and continued in each assessment of the property so long as it is exempt from taxation for any purpose. The provisions herein, relating to the assessment and exemption of property purchased with a pension, apply and shall be enforced in each municipal corporation authorized to levy taxes.

Subd. amended by L. 1914, Ch. 278, in effect April 8, 1914.

6. Bonds of this state or any civil division thereof.

Subd. amended by L. 1917, Ch. 97, in effect March 28, 1917.

7. The real property of a corporation or association organized exclusively for the moral or mental improvement of men or women, or for religious, bible, tract, charitable, benevolent, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic historical or cemetery purposes, or for the enforcement of laws relating to children or animals, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes, and the personal property of any such corporation shall be exempt from taxation. But no such corporation or association shall be entitled to any such exemption if any officer, member or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes, or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purposes be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association, or for any of its members or employees, or if it be not in good faith organized or conducted exclusively for one or more of such purposes. The real property of such corporation or association entitled to such exemption held by it exclusively for one or more of such purposes and from which no rents, profits or income are derived, shall be so exempt, though not in actual use therefor by reason of the absence of suitable buildings or improvements thereon, if the construction of such buildings or improvements is in progress, or is in good faith contemplated by such corporation or association; or if such real property is held by such corporation or association upon condition that the title

thereto shall revert in case any building not intended and suitable for one or more of such purposes shall be erected upon said premises or some part thereof. The real property of any such corporation no so used exclusively for carrying out thereupon one or more of such purposes but leased or otherwise used for other purposes, shall not be exempt, but if a portion only of any lot or building of any such corporation or association is used exclusively for carrying out thereupon one or more such purposes of any such corporation or association, then such lot or building shall be so exempt only to the extent of the value of the portion so used, and the remaining or other portion, to the extent of the value of such remaining or other portion, shall be subject to taxation; provided, however, that a lot or building owned and actually used for hospital purposes, by a free public hospital, depending for maintenance and support upon voluntary charity, shall not be taxed as to a portion thereof leased or otherwise used for the purposes of income, when such income is necessary for, and is actually applied to the maintenance and support of such hospital, and further provided that the real property of any fraternal corporation, association or body created to build and maintain a building or buildings for its meeting or meetings of the general assembly of its members, or subordinate bodies of such fraternity and for the accommodation of other fraternal bodies or associations, the entire net income of which real property is exclusively applied or to be used to build, furnish and maintain an asylum or asylums, a home or homes, a school or schools, for the free education or relief of the member of such fraternity, or for the relief, support and care of worthy and indigent members of the fraternity, their wives, widows or orphans, shall be exempt from taxation, and provided also that the real estate owned by a free public library, situate outside of a city, shall not be taxed as to that portion thereof leased or otherwise used for purposes of income, when such income is necessary for and actually applied to the maintenance and support of such library. Property held by any officer of a religious denomination shall be entitled to the same exemptions, subject to the same conditions and exceptions, as property held by a religious corporation. Property held by trustees named in a will or deed of trust or appointed by the supreme court of the state of New York for hospital and library purposes, as set forth in this subdivision, shall be exempt to the same extent and subject to the same conditions and exceptions as if held by a corporation.

Subd. amended by L. 1916, ch. 411, and L. 1918, ch. 288, in effect April 19, 1918.

8. Real property of an incorporated association of present or former volunteer firemen actually and exclusively used and occupied by such corporation and not exceeding in value fifteen thousand dollars.

9. All dwelling-houses and lots of religious corporations while actually used by the officiating clergymen thereof, but the total amount of such exemption to any one religious corporation shall not exceed two thousand dollars. Such exemption shall be in addition to that provided by subdivision seven of this section.

10. The real property of an agricultural society permanently used by it for exhibition grounds.

11. The real and personal property of a minister of the gospel or priest of any denomination being an actual resident and inhabitant of this state, who is engaged in the work assigned to him by the church or denomination to which he belongs, or who is disabled by impaired health from the performance of such duties, or over seventy years of age, and the property of the widow of such minister while she remains such and is an actual resident and inhabitant of this state, but the total amount of such exemption on account of both real and personal property, shall not exceed fifteen hundred dollars.

Subd. amended by L. 1916, Ch. 412, and L. 1917, Ch. 42, in effect March 9, 1917.

12. All vessels registered at any port in this state and owned by an American citizen, or association, or by any corporation, incorporated under the laws of the state of New York, engaged in ocean commerce between any port in the United States and any foreign port, are exempted from all taxation in this state, for state and local purposes; and all such corporations, all of whose vessels are employed between foreign ports and ports in the United States, are exempted from all taxation in this state, for state and local purposes, upon their capital stock, franchises and earnings, until and including December thirty-first, nineteen hundred and twenty-two.

13. A bond, mortgage, note, contract, account or other demand, belonging to any person not a resident of this state, sent to or deposited in this state for collection; the products of another state, owned by a nonresident of this state and consigned to his agent in this state for sale on commission for the benefit of the owner; moneys of a nonresident of this state, under the control or in the possession of his agent in this state, when transmitted to such agent for the purpose of investment or otherwise.

14. The deposits in any bank for savings which are due depositors, the accumulations in any domestic life insurance corporation, held for the exclusive benefit of the insured, other than real estate and stocks, now liable to taxation; the accumulations of any incorporated co-operative loan association upon the shares of such association held by any person; certificates of investment or other evidences of indebtedness, together with any accumulations thereon, issued by any investment company organized pursuant to the provisions of article seven of the banking law and actually exercising the powers conferred by both subdivisions two and four of section two hundred and ninety-three of the banking law; and personal property of any corporation, person, company or association transacting the business of fire, casualty or surety insurance in this state equal in value to the unearned premiums required by the laws of this state, or the regulations of its insurance department, to be charged as a liability.

Subd. amended by L. 1917, Ch. 707, in effect June 1, 1917.

15. Moneys collected in the course of the business of any corporation, association or society doing a life or casualty insurance business or both, upon the co-operative or assessment plan, and which are to be used for the payment of assessments, or for death losses or for benefits to disabled members.

16. The owner or holder of stock in an incorporated company liable to taxation on its capital, shall not be taxed as an individual for such stock.

17. The personal property in excess of one hundred thousand dollars of a mutual life insurance corporation incorporated in this state before April tenth, eighteen hundred and forty-nine.

18. Property real, from which no income is derived, and personal property, situated within any city of the first class and belonging to the medical society of any county, which county is either wholly or partly within such city and which society was heretofore incorporated under the provisions of chapter ninety-four, laws of eighteen hundred and thirteen, entitled "An act to incorporate medical societies for the purpose of regulating the practice of physic and surgery in this state," provided that such property is used for the purposes of such a society and not otherwise, and provided that such

exemption of property for any society in the counties of Kings or New York shall not exceed one hundred and fifty thousand dollars, and in any other county affected hereby shall not exceed fifty thousand dollars.

19. Property real from which no rent is derived and personal property, situated within any city of the first class and belonging to any incorporated pharmaceutical society of any county which is either wholly or partly within such city, which society has heretofore been or may hereafter be authorized and empowered by act of the legislature to establish and which has established or may hereafter establish, a college of pharmacy in such city; provided that such property is used for the purposes of such college and not otherwise, and provided also that the exemption of such property for any society in the counties of Kings and New York shall not exceed one hundred thousand dollars, and in any other county affected hereby shall not exceed fifty thousand dollars.

20. The commissioners of the sinking fund or other chief financial board of any city of the first class, may, in their discretion, by resolution, exempt from taxation for local purposes the real and personal property, or any part of it, of a corporation or association organized to maintain an academy of music, if in the opinion of such board, the interests of such city require the maintenance of such academy of music, and it shall appear that the property so exempted represents or was purchased with the proceeds of popular or general subscription for the erection of such academy of music. No property of such corporation or association shall be exempt, except the real property consisting of such academy of music and the furniture thereof, or personal property so subscribed and held for the purpose of constructing such academy of music. No such exemption shall be made for any year unless it shall appear that during the preceding year, the corporation or association has not earned a net annual income upon the net cost of such academy and the furniture thereof.

21. Household furniture and personal effects to the value of one thousand dollars.

Subd. added by L. 1912, Ch. 267, in effect April 11, 1912.

§ 5. Taxation of lands sold or leased by the state.

All lands which have been sold by the state, although not conveyed, shall be assessed in the same manner as if such purchaser were the actual owner. Improvements not acquired by the state but situate on land purchased by the state shall be assessed to the owner thereof. Where land is leased by the state such leasehold interest, except in cases where by the terms of the lease the state is to pay the taxes imposed upon the property leased, shall be assessed to the lessee or occupant in the tax district where the land is situated.

Amended by L. 1916, Ch. 323, in effect April 26, 1916.

§ 6. The assessment of real and personal property.

All real and personal property subject to taxation shall be assessed at the full value thereof, provided, however, that the owner of personal property shall be allowed a deduction from the full value of all his taxable personal property to the extent of the just debts owing by him but no such deduction shall be allowed by reason of the indebtedness of the owner contracted or incurred in the purchase of nontaxable property or securities owned by him or held for his

benefit, nor for or on account of any indirect liability as surety, guarantor, indorser or otherwise, nor for or on account of any debt or liability contracted or incurred for the purpose of evading taxation.

Amended by L. 1914, Ch. 277, in effect April 11, 1914.

§ 7. When property of nonresidents is taxable.

1. Nonresidents of the state doing business in the state, either as principals or partners, shall be taxed on the capital invested in such business, as personal property, at the place where such business is carried on, to the same extent as if they were residents of the state.

2. The personal property of nonresidents of the state having an actual situs in the state, and not forming a part of capital invested in business in the state, shall be assessed in the name of the owner thereof for the purpose of identification and taxed in the tax district where such property is situated, unless exempt by law. This subdivision shall not apply to money, or negotiable collateral securities, deposited by, or debts owing to, such nonresidents nor shall it be construed as in any manner modifying or changing the law imposing a tax on real estate mortgage securities.

§ 8. Place of taxation of property of residents.

Every person shall be taxed in the tax district where he resides when the assessment for taxation is made, for all personal property owned by him, or under his control as agent, trustee, guardian, executor or administrator. Where taxable personal property is in the possession or under the control of two or more agents, trustees, guardians, executors or administrators residing in different tax districts, each shall be taxed for an equal portion of the value of such property so held by them. Rents reserved in any lease in fee or for one or more lives or for a term more than twenty-one years and chargeable upon real property within the state, shall be taxable to the person entitled to receive the same, as personal property in the tax district where such real property is situated, at the principal sum, the interest of which at the legal rate per annum shall produce a sum equal to such annual rents, and if payable in anything except money, at the value of the rents in money to be ascertained by the assessors, the value of each rent to be assessed separately, and for the purpose of taxation thereof such person is to be deemed a resident of such tax district. When a person shall have acquired a residence in a tax district, and shall have been taxed therein, such residence shall be presumed to continue for the purpose of taxation until he shall have acquired another residence in this state or shall have removed from this state. The residence of a person on July first shall be deemed his residence for the purpose of assessment and taxation during that year. If he shall have actually and in good faith changed his residence after July first, and before August first in any year, from one tax district to another, and shall make proof to the assessors at or before their last meeting for the correction of the assessment-roll of such change of residence and that he is assessed in the tax district to which he has removed, his name and the assessment of his personal property shall be stricken from the assessment-roll of the tax district where he resided on July first. In case of any controversy as to the proper place of taxation within the state of any person, his residence for purposes of taxation may be determined by the tax commission, subject to review by the court.

Amended by L. 1914, Ch. 277, and L. 1916, Ch. 323, in effect April 26, 1916.

§ 9. Place of taxation of real property.

Real property shall be assessed as of July first in the tax district in which it is situated. In all cases the assessment shall be deemed as against the real property itself, and the property itself shall be holden and liable to sale for any tax levied upon it.

Amended by L. 1911, Ch. 315, and L. 1916, Ch. 323, in effect April 26, 1916.

§ 10. Taxation of real property divided by line of tax district.

Amended by L. 1914, Ch. 66, and repealed by L. 1917, Ch. 154, in effect April 6, 1917.

§ 11. Place of taxation of property of corporations.

The real estate of all incorporated companies liable to taxation shall be assessed in the tax district in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital shall be assessed in the tax district where the principal office or place for transacting the financial concerns of the company shall be, or if such company have no principal office, or place for transacting its financial concerns, then in the tax district where the operations of such company shall be carried on. In the case of a toll bridge, the company owning such bridge shall be assessed in the tax district in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company are collected in several tax districts, the company shall be assessed in the tax district in which the treasurer or other officer authorized to pay the last preceding dividend resides.

§ 12. Taxation of corporate stock.

The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment-roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this state, shall be assessed at its actual value.

§ 13. Stockholders of bank taxable on shares.

The stockholders of every bank or banking association organized under the authority of this state, or of the United States, shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes in the tax district where such bank or banking association is located, and not elsewhere, whether the said stockholders reside in said tax district or not.

§ 14. Place of taxation of individual bank capital.

Every individual banker shall be taxable upon the amount of capital invested in his banking business in the tax district where the place of such business is located and shall, for that purpose, be deemed a resident of such tax district.

§ 15. Report of exempt property.

It shall be the duty of the board of assessors of the several towns of this state, and the boards or officials charged with the duty of assessing property for the purpose of taxation in the several cities of the state, to furnish to the clerks of the boards of supervisors of their respective counties, or in the

case of the city of New York, to the city clerk of that city, on or before the first day of September in each year, a full and complete list and statement of all property situated within their respective districts exempt or partially exempt from taxation under the laws of this state. Such list and statement shall be made on blanks furnished by the tax commission and in such form and to contain and set forth all the information relative to such property and the situation and value thereof, as may be required by the tax commission, and to be verified in the same manner as assessments of property for the purposes of taxation, and in the city of New York by the chief deputy of the department of taxes and assessments. The tax commission shall prepare and transmit to the clerk of the board of supervisors in each county and to the city clerk of the city of New York, a sufficient number of such blanks, on or before the first day of June in each year, and the clerks of the boards of supervisors and the city clerk of the city of New York shall forthwith, upon the receipt thereof, distribute the same among the boards of assessors for use in preparing the statement herein required. And it shall be the duty of the clerk of the board of supervisors of each county and of the city clerk of the city of New York, to transmit such completed lists or statements to the tax commission, on or before the first day of October in each year, and the tax commission shall tabulate such statements, and cause to be published in their annual report to the legislature, a complete tabulated statement, based upon the statement so transmitted to the tax commission, of all real estate in the several counties of the state which is exempt or partially exempt from taxation. Immediately upon the receipt of the completed reports by the various clerks of the boards of supervisors, and the city clerk of the city of New York, those officials shall prepare a tabulated statement of the returns received and shall post a copy thereof in a conspicuous place, and in all cities of the state cause a copy thereof to be published in the official paper or papers of said city twice, with an interval between publications of three weeks except such cities which publish a complete assessment roll. The expense of such publication shall be a city charge and shall be audited and paid in the same manner as charges for other city notices are audited and paid.

Amended by L. 1916, Ch. 323, in effect April 26, 1916.

§ 21. Preparation of assessment-roll.

1. The assessors shall prepare an assessment-roll or rolls, the form of which shall be prescribed or approved by the tax commission, so classified and arranged with respect to number of parts and number of columns in each part and with such entries and descriptions as shall be sufficient to identify each separately assessed parcel or portion of real estate with the approximate quantity of the square feet, square rods or acres contained in such parcel or portion or a statement of the linear dimensions thereof; each special franchise and the names of all persons and corporations taxable on personal property, capital stock or capital invested in business and bank stock. Assessments of real property, other than special franchises, shall be carried in a separate part of the roll from the assessments of personal property.

2. The form of assessment-roll prescribed or approved by the tax commission shall provide for the indication thereon, in appropriate columns, of the name of the village, if in a village, the number of the school district and the name or number of any special district in which a special tax is levied for district purposes, in which each parcel or portion of real property and each special franchise described on such roll is situated or in which each person or

corporation subject to taxation for personal property in the tax district pursuant to this chapter, resides, carries on business, has its principal place of business or in which its operations are carried on or where the personal property is located, as the case may be, and shall also provide for the entry of the assessments of real property, special franchises and personal property respectively, made pursuant to this chapter, and of the apportionments made pursuant to section forty of this chapter.

3. In all cities there shall be an additional column in the assessment-roll before the column in which is set down the value of real property, and in such additional column there shall be set down the value of the land exclusive of the buildings thereon. The total assessment only can be reviewed.

4. When a tax map has been approved by the tax commission, reference to the lot, block and section number or other identification numbers of any parcel on said map shall be deemed a sufficient description of said parcel on the assessment-roll.

5. A separate part shall be provided for the listing of property that is entirely exempt from taxation. If the property is partially exempt it shall be listed with the taxable property.

6. Provision shall also be made thereon for the entry of the amount of tax levied for state, county, city, town, highway or special district purposes, against each parcel or portion of real property, each special franchise and each person or corporation for personal property, together with the date of payment thereof and such other items and details as may be required.

7. The tax commission shall adopt regulations and rules for the preparation and use of the assessment-roll and shall advise with and instruct boards of assessors and other officers as to their duties in respect thereto.

Amended by L. 1911, Ch. 315; L. 1912, Ch. 266, repealed and new section inserted by L. 1914, Ch. 277, and amended by L. 1915, Ch. 218, and L. 1916, ch. 323, in effect April 26, 1916.

§ 37. Hearing of complaints.

The assessors shall meet at the time and place specified in such notice, and hear and determine all complaints in relation to such assessments brought before them, and for that purpose they may adjourn from time to time. Such complainants shall file with the assessors a statement, under oath, specifying the respect in which the assessment complained of is incorrect, which statement must be made by the person assessed or whose property is assessed, or by some person authorized to make such statement, and who has knowledge of the facts stated therein. The assessors may administer oaths, take testimony and hear proofs in regard to any such complaint and the assessment to which it relates. If not satisfied that such assessment is erroneous, they may require the person assessed, or his agent or representative, or any other person, to appear before them and be examined concerning such complaint, and to produce any papers relating to such assessment with respect to his property or his residence for the purpose of taxation. The assessors shall, after said examination, fix the value of the property of the complainant and for that purpose may increase or diminish the assessment thereof. If any such person, or his agent or representative, shall wilfully neglect or refuse to attend and be so examined, or to answer any material question put to him, such person shall not be entitled to any reduction of his assessments. Minutes of the examination of every person exam-

ined by the assessors upon the hearing of any such complaint shall be taken and filed in the office of the town or city clerk.

Amended by L. 1916, Ch. 323, in effect April 26, 1916.

§ 290. Contents of petition for writ of certiorari.

Any person assessed upon any assessment-roll, claiming to be aggrieved by any assessment for property therein, may present to the supreme court a petition duly verified setting forth that the assessment is illegal, specifying the grounds of the alleged illegality, or if erroneous by reason of overvaluation, stating the extent of such overvaluation, or if unequal in that the assessment has been made at a higher proportionate valuation than the assessment of other property on the same roll by the same officers, specifying the instances in which such inequality exists, and the extent thereof, and stating that he is or will be injured thereby. Such petition must show that the application has been made in due time to the proper officers to correct such assessment. Two or more persons assessed upon the same roll who are affected in the same manner by the alleged illegality, error or inequality, may unite in the same petition.

Amended by L. 1916, Ch. 323, in effect April 26, 1916.

§ 291. Allowance of writ of certiorari.

Such petition must be presented to a justice of the supreme court or at a special term of the supreme court in the judicial district in which the assessment complained of was made, within fifteen days after the completion and filing of the assessment-roll and the first posting or publication of the notice thereof as required by this chapter. Upon the presentation of such petition, the justice or court may allow a writ of certiorari to the officers making the assessment, to review such assessment, and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days, and may be extended by the court or a justice thereof. Such writ shall be returnable to a special term of the supreme court of the judicial district in which the assessment complained of was made. The allowance of the writ shall not stay the proceedings of the assessors or other persons to whom it is directed or to whom the assessment is delivered, to be acted upon according to law.

§ 292. Return to writ.

The officers making a return to such writ shall not be required to return the original assessment-roll or other original papers acted upon by them, but it shall be sufficient to return certified or sworn copies of such roll or papers, or of such portions thereof as may be called for by such writ. The return must concisely set forth such other facts as may be pertinent and material to show the value of the property assessed on the roll and the grounds for the valuation made by the assessing officers and the return must be verified.

§ 295. Appeals.

An appeal may be taken by either party from an order, judgment or determination under this article as from an order, and shall be heard and determined in like manner as appeals in the supreme court from orders. All issues and appeals in any proceeding under this article shall have preference over all other civil actions and proceedings in all courts.

XII. PENAL LAW—MISCELLANEOUS PROVISIONS.

(Chapter 40 of the Consolidated Laws.)

§ 510. Forfeiture of office and suspension of civil rights.

A sentence of imprisonment in a state prison for any term less than for life, forfeits all the public offices, and suspends, during the term of the sentence, all the civil rights, and all private trusts, authority, or powers of, or held by, the person sentenced.

§ 511. Consequence of sentence to imprisonment for life.

A person sentenced to imprisonment for life is thereafter deemed civilly dead.

§ 776. Failure to file candidate's statement of expenses.

Every candidate who is voted for at any public election held within this state shall, within ten days after such election, file as hereinafter provided an itemized statement showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Such statement shall give the names of the various persons who received such moneys, the specific nature of each item, and the purpose for which it was expended or contributed. There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth in substance that the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself or through any other person in aid of his election. Candidates for offices to be filled by the electors of the entire state, or any division or district thereof greater than a county, shall file their statements in the office of the secretary of state. The candidates for town, village and city offices, excepting in the city of New York, shall file their statements in the office of the town, village or city clerk, respectively, and in cities wherein there is no city clerk, with the clerk of the common council of the city wherein the election occurs. Candidates for all other offices, including all officers in the city and county of New York, shall file their statements in the office of the clerk of the county wherein the election occurs, unless the county has a commissioner of elections, in which case candidates shall file their statements in the office of such commissioner of elections.

Any candidate for office who refuses or neglects to file a statement as prescribed in this section shall be guilty of a misdemeanor. A county clerk or commissioner of elections with whom a candidate's statement of expenses is filed shall, within twenty days after the election, file a certified copy thereof with the secretary of state.

Amended by L. 1910, ch. 439.

§ 781. Limitation of amounts to be expended by candidates.

The total amount expended by a candidate for a public office, voted for at an election, by the qualified electors of the state or any political subdivision thereof, for any of the purposes specified in section seven hundred and sixty-seven of this chapter, for contributions to political committees, as that term is defined in section five hundred and forty of the election law, or for any purpose tending in any way, directly or indirectly, to promote or aid in securing his nomination and election shall not exceed the amount specified herein. By a candidate for governor, the sum of ten thousand dollars; by a candidate for any other elective state office, other than a judicial

See Bender's Penal Law and Criminal Code, also Cook's Edition.

office, the sum of six thousand dollars; by a candidate for the office of representative in congress or presidential elector, the sum of four thousand dollars; by a candidate for the office of state senator, the sum of two thousand dollars; by a candidate for the office of member of assembly, the sum of one thousand dollars; by a candidate for any other public office to be voted for by the qualified electors of a county, city, town or village, or any part thereof, if the total number of votes cast therein for all candidates for the office of governor at the last preceding state election, shall be five thousand or less, the sum of five hundred dollars; if the total number of votes cast therein at such last preceding state election be in excess of five thousand, the sum of three dollars for each one hundred votes in excess of such number may be added to the amounts above specified. Any candidate for a public office who shall expend for the purposes above mentioned an amount in excess of the sum herein specified shall be guilty of a misdemeanor.

§ 781-a. Political contributions by owners of polling places prohibited.

A person who, being the owner of premises contracted for or used as a place of registration or as a polling place for any election or official primary, who makes, offers or promises to make a political contribution to any party committee, candidate or person, or any person who makes, promises or offers to make any such political contribution as an inducement for the hiring of premises owned by him for use as a place of registration or polling place for any election or official primary, shall be guilty of a misdemeanor.

(Added by L. 1918, ch. 294, in effect April 20, 1918.)

§ 782. Penalty.

Any person convicted of a misdemeanor under this article shall for a first offense be punished by imprisonment for not more than one year, or by a fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment. Any person convicted of a misdemeanor under this article for a second or subsequent offense shall be guilty of a felony.

§ 1271. Hours of labor to be required.

Any person or corporation:

1. Who, contracting with the state or a municipal corporation, shall require more than eight hours work for a day's labor; or,

2. Who shall require more than ten hours labor, including one-half hour for dinner, to be performed within twelve consecutive hours, by the employees of a street surface and elevated railway owned or operated by corporations whose main line of travel or routes lie principally within the corporate limits of cities of more than one hundred thousand inhabitants; or

3. Who shall require the employees of a corporation owning or operating a brickyard to work contrary to the requirements of section five of the labor law; or,

4. Who shall require or permit any employee engaged in or connected with the movement of any train of a corporation operating a line of railroad of thirty miles in length, or over, in whole or in part within this state, to remain on duty more than sixteen consecutive hours; or to require or permit any such employee who has been on duty sixteen consecutive hours to go on duty without having had at least ten hours off duty; or to require or permit any such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period, to continue on duty or to go on duty without having had at least eight hours off duty within such twenty-four hour period; except when by casualty occurring after such employee has started on his trip or by unknown casualty occurring before he started on his trip, and except when by accident or unexpected delay of trains scheduled to make connection with the train on which such employee is serving, he is prevented from reaching his terminal;

Is guilty of a misdemeanor, and on conviction therefor shall be punished

by a fine of not less than five hundred nor more than one thousand dollars for each offense.

Amended by L. 1916, Ch. 151, in effect April 7, 1916.

§ 1275. Violations of provisions of labor law; the industrial code; the rules and regulations of the industrial board of the department of labor; orders of the commissioner of labor.

Any person who violates or does not comply with any provision of the labor law, any provision of the industrial code, any rule or regulation of the industrial board of the department of labor, or any lawful order of the commissioner of labor; and any person who knowingly makes a false statement in or in relation to any application made for an employment certificate as to any matter required by article six and eleven of the labor law to appear in any affidavit, record, transcript or certificate therein provided for, is guilty of a misdemeanor and upon conviction shall be punished, except as in this chapter otherwise provided, for a first offense by a fine of not less than twenty nor more than fifty dollars; for a second offense by a fine of not less than fifty nor more than two hundred and fifty dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

Amended by L. 1911, ch. 749; L. 1912, ch. 383; L. 1913, ch. 349. In effect April 22, 1913.

§ 1425. Malicious injury to and destruction of property.

A person who wilfully:

1. Cuts down, destroys or injures any wood or timber standing or growing, or which has been cut down and is lying on lands of another, or of the people of the state; or,
2. Cuts down, girdles or otherwise injures a fruit, shade or ornamental tree standing on the lands of another, or of the people of the state; or,
3. Severs from the freehold of another, or of the people of the state, any produce thereof, or any thing attached thereto; or,
4. Digs, takes or carries away without lawful authority or consent from any lot of land in any city or incorporated village, or from any lands included within the limits of a street or avenue laid down on the map of such city or village, or otherwise recognized or established, any earth, soil or stone; or,
5. Enters without the consent of the owner or occupant any orchard, fruit garden, vineyard or ground whereon is cultivated any fruit, with intent to take, injure or destroy any thing there growing or grown; or,

6. Cuts down, destroys or in any way injures any shrub, tree or vine being or growing within any such orchard, garden, vineyard or upon any such ground, or any building, frame work or erection therein; or,

7. Maliciously injures any ice upon any water from which ice is taken as an article of merchandise with intent to injure the owner thereof, or enters or skates upon any pond or body of water not navigable, kept and used for the purpose of taking ice therefrom as an article of merchandise, and upon or adjoining which a notice has been placed in a conspicuous position forbidding such entry, and stating the purpose for which said body of water is kept or used, or puts or throws upon or into any such pond or body of water any stick, stone or other substance to the injury of the ice or water; or,

8. Unlawfully takes or carries away or interferes with or disturbs by any means the oysters or other shellfish of another, legally planted or cultivated upon the bed of any river, bay, sound or water of this state, or removes, pulls up, sinks or destroys any stake or buoy designated or marking out any legally planted or cultivated oyster or other shellfish bed of another, is guilty of a misdemeanor; and any oysters or other shellfish planted or cultivated upon any beds owned or held under franchise or lease made by authority of any laws of this state or held under leases made by any town or its board of trustees or by any city of the state shall be deemed legally planted or cultivated, and any such bed shall be deemed legally marked or defined when the owner, lessee or holder thereof shall prove on the trial of any offense herein defined, that one or more stakes or buoys stood on or near each corner of the bed embracing the planted or cultivated oysters or shellfish within ninety days before the offense on trial was committed; such stakes or buoys may but need not necessarily embrace more than the actual planted or cultivated bed. Evidence that any boat or vessel has been used for the purpose of taking, carrying away or interfering with such oysters shall be presumptive evidence of guilt as against the owner, master or crew of such vessel; or,

Subd. amended by L. 1914, ch. 150. In effect September 1, 1914.

9. Intrudes or places any hovel, shanty or building upon, or within the limits of any lot or piece of land within any incorporated city or village, without the consent of the owner, or within the boundaries of any street or avenue within such city or village; or,

10. Kills, wounds or traps any bird, deer, squirrel, rabbit or other animal within the limits of any cemetery or public burying ground, or of any public park or pleasure ground, or removes the young of any such animal, or the eggs of any such bird, from any cemetery, park or pleasure ground, or exposes for sale, or knowingly buys or sells any bird or animal so killed or taken; or,

11. Drives or leads along a public highway a wild and dangerous animal, or vehicle or engine propelled by steam, except upon a railroad, along a public highway, or causes or directs such animal, vehicle or engine to be so driven, led or to be made to pass, unless a person of mature age shall precede such animal, vehicle or engine by at least one-eighth of a mile, carrying a red light, if in the night time, and gives warning to all persons whom he meets traveling such highway, of the approach of such animal, vehicle or engine; or,

11-a. [Added, 1909.] With intent so to do, damages in any manner an automobile or other motor vehicle; or,

Added by L. 1909, Ch. 525. In effect Sept. 1, 1909.

12. Takes or attempts to take, without the consent of the owner of any lake or pond, any fish from the waters thereof, provided such lake or pond is so situated that fish can not pass thereinto from the waters of any other lake, pond or stream, either public or owned by other persons; or, without the consent of the owner of any such lake or pond, places therein any piscivorous fish or any poison or other substance injurious to the health of fish, or lets the waters out of any such lake or pond, with intent to take fish therefrom or to harm fish therein; or,

13. Injures any arsenal or armory, or its fixtures, or any uniforms, arms or equipments, or other property therein deposited; or,

14. Trespasses upon any rifle range lawfully used by or in connection with the national guard of the state, or any organization, division or district thereof, or injures any target or other property situate thereon, or wilfully violates thereon any regulation established to maintain order, preserve property or prevent accident, upon such range, or removes, mutilates or destroys a battle flag, book, placard, relic or record deposited or kept in the state military bureau; or,

15. Cuts, spoils or destroys any cordage, cable, buoys, buoy-rope, head-fast or other fast fixed to the anchor or moorings belonging to any vessel, or who shall, with intent to injure, tamper in any way with the lines or cables by which any vessel is moored or made fast, or who shall, with intent to injure, tamper in any manner with the steering-gear, bell-gear, engines, machinery, lights or any other equipments of any vessel,

Shall be deemed guilty of a misdemeanor.

16. Any person, who in any manner, for exhibition or display, shall place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement, of any nature upon any flag, standard, color, shield or ensign of the United States of America, or the state of New York, or shall expose or cause to be exposed to public view any such flag, standard, color, shield, or ensign, upon which after the first day of September, nineteen hundred and five, shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word, figure, mark, picture, design or drawing, or any advertisement of any nature, or who shall expose to public view manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article, or substance, being an article of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which after the first day of September, nineteen hundred and five, shall have been printed, painted, attached, or otherwise placed, a representation of any such flag, standard, color, shield or ensign, to advertise, call attention to, decorate, mark or distinguish, the article or substance, on which so placed, or who shall publicly mutilate, deface, defile, or defy, trample upon, or cast contempt, either by words or act, upon any such flag, standard, color, shield or ensign, shall be deemed guilty of a misdemeanor and shall also forfeit a penalty of fifty dollars for each such offense, to be recovered with costs in a civil action, or suit, in any court having jurisdiction, and such action or suit may be brought by or in the name of any citizen of this state, and such penalty when collected less the reasonable cost and expense of action or suit and recovery to be certified by the district attorney of the county in which the offense is committed shall be paid into the treasury of this state; and two or more penalties may be sued for and recovered in the same action or suit. The words, flag, standard, color, shield or ensign, as used in this subdivision or section, shall include any flag, standard, color, shield, ensign, or any picture or representation, of either thereof, made of any substance, or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color, shield, or ensign, of the United States of America, or of the state of New York, or a picture or a representation, of either thereof, upon which shall be shown the colors, the stars, and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation may believe the same to represent the flag, colors, standard, shield or ensign of the United States of America, or of the state of New York.

This subdivision shall not apply to any act expressly permitted by the statutes of the United States of America, or by the United States Army and Navy regulations, nor shall it be construed to apply to a certificate, diploma, warrant, or commission of appointment to office, ornamental picture, article

of jewelry, stationery for use in private correspondence, or newspaper or periodical, on any of which shall be printed, painted or placed, said flag, standard, color, shield or ensign disconnected and apart from any advertisement.

The possession by any person, other than a public officer, as such, of any such flag, standard, color, shield or ensign, on which shall be anything made unlawful at any time by this section, or of any article or substance or thing on which shall be anything made unlawful at any time by this section shall be presumptive evidence that the same is in violation of this section, and was made, done or created after the first day of September, nineteen hundred and five, and that such flag, standard, color, shield, ensign, or article, substance, or thing, did not exist on the first day of September, nineteen hundred and five.

Amended by L. 1917, Chs. 54 and 779, in effect June 8, 1917. Chapter 54 is repealed by section 2 of chapter 779. Hence, only changes made by Ch. 779 are inserted.

§ 1427. Removal of books and works of art from library, wilful injury to works of art, ornamental trees or other improvements.

Any person who:

1. Removes or assists in removing any book, manuscript, map, print, coin, medal, printing or other literary article or work of art from the library building of any reference library company, except for its preservation or repair or for the purpose of its deposit in some other building of the company, or, being a trustee or officer of such company, consents to the removal thereof; or, upon such removal refuses to permit the same to be restored; or,

2. Not being the owner thereof, and without lawful authority, wilfully injures, disfigures, removes or destroys a gravestone, monument, work of art, or useful or ornamental improvement, or any shade tree or ornamental plant, whether situated upon private grounds or upon the street, road or sidewalk, cemetery or public park or place, or removes from any grave in a cemetery any flowers, memorials or other tokens of affection, or other thing connected with them,

Is guilty of a misdemeanor.

§ 1428. Wilful or malicious injury to certain article in libraries, galleries, museums or exhibitions.

A person who wilfully or maliciously cuts, tears, defaces, disfigures, soils, obliterates, breaks or destroys, a book, map, chart, picture, engraving, statue, coin, model, apparatus, specimen, or other work of literature or object of art, or curiosity, deposited in a public library, gallery, museum, collection, fair, or exhibition, or in a library, gallery, museum, collection or exhibition belonging to any incorporated college or university, or to any other incorporated institution devoted to educational, scientific, literary, artistic, historical or charitable purposes, is punishable by imprisonment in a state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

§ 1530. Public nuisance defined.

A "public nuisance" is a crime against the order and economy of the state, and consists in unlawfully doing an act, or omitting to perform a duty, which act or omission:

2. Annoys, injures or endangers the comfort, repose, health or safety of any considerable number of persons; or,

2. Offends public decency; or,

3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a lake, or a navigable river, bay, stream, canal or basin, or a stream, creek or other body of water which has been dredged or cleared at public expense, or a public park, square, street or highway; or,

4. In any way renders a considerable number of persons insecure in life, or the use of property.

§ 1610. Unlicensed peddlers.

A person who is found trading as a peddler without a license, or contrary to the terms of his license, or who refuses to produce his license on demand of any officer or citizen, is guilty of a misdemeanor.

§ 1622. Swearing falsely in any form, perjury.

A person swearing, affirming, or declaring, in any form, where an oath is authorized by law, is lawfully sworn, and is guilty of perjury, in a case where he would be guilty of the same crime, if he had sworn by laying his hand upon the Gospels.

§ 1740. Wilful violation of health laws.

1. A person who wilfully violates or refuses or omits to comply with any lawful order or regulation prescribed by any local board of health or local health officer, is guilty of a misdemeanor.

2. A person who wilfully violates any provision of the health laws, or any regulation lawfully made or established by any public officer or board under authority of the health laws the punishment for violating which is not otherwise prescribed by those laws, or by this chapter, is punished by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars or by both.

§ 1741. Obstructing health officer in performance of his duty.

A person who wilfully opposes or obstructs a health officer or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.

§ 1820. Acting in a public office without having qualified.

A person who executes any of the functions of a public office without having taken and duly filed the required oath of office, or without having executed and duly filed the required security, as prescribed by law, is guilty of a misdemeanor.

§ 1821. Acts of officers de facto.

The last section must not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where persons other than himself are interested in maintaining the validity of such acts.

§ 1822. Giving or offering bribes.

A person who gives or offers a bribe to any executive officer of this state with intent to influence him in respect to any act, decision, vote, opinion,

or other proceeding as such officer, is punishable by imprisonment in a state prison not exceeding ten years, or by fine not exceeding five thousand dollars, or by both.

§ 1823. Asking or receiving bribes.

An executive officer, or person elected or appointed to an executive office, who asks, receives or agrees to receive any bribe, upon an agreement or understanding that his vote, opinion or action upon any matter then pending or which may by law be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in a state prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both; and in addition thereto forfeits his office and is forever disqualified from holding any public office under this state.

§ 1826. Taking unlawful fees.

A public officer or a deputy, clerk, assistant or other subordinate of a public officer, or any person appointed or employed by or in the office of a public officer, who shall, in any manner act for or in behalf of any such officer, who asks or receives, or consents or agrees to receive, any emolument, gratuity or reward, or any promise of emolument, gratuity or reward, or any money, property or thing of value or of personal advantage, except such as may be authorized by law, for doing or omitting to do any official act, or for performing or omitting to perform, or for having performed or omitted to perform any act whatsoever directly or indirectly related to any matter in respect to which any duty or discretion is by or in pursuance of law imposed upon or vested in him, or may be exercised by him by virtue of his office, or appointment or employment or his actual relation to the matter, shall be guilty of a felony, punishable by imprisonment for not more than ten years or by a fine of not more than four thousand dollars, or both.

§ 1830. Taking fees for services not rendered.

An executive officer who asks or receives any fee or compensation for any official service which has not been actually rendered, except in cases of charges for prospective costs, or of fees demandable in advance in the cases allowed by law, is guilty of a misdemeanor.

§ 1832. Corrupt bargain for appointment.

1. A person who gives or offers to give, any gratuity or reward, in consideration that himself or any other person shall be appointed to a public office, or to a clerkship, deputation, or other subordinate position, in such an office, or shall be permitted to exercise, perform, or discharge any prerogatives or duties, or to receive any emoluments, of such an office, is guilty of a misdemeanor.

2. A person who asks or receives, or agrees to receive, any gratuity, or reward, or any promise thereof, for appointing another person, or procuring for another person an appointment, to a public office or to a clerkship, deputation, or other subordinate position in such an office, is guilty of a misdemeanor. If the person so offending is a public officer, a conviction also forfeits his office.

§ 1833. Selling right to official powers.

A public officer who, for any reward, consideration or gratuity, paid, or agreed to be paid, directly or indirectly, grants to another the right or authority to discharge any functions of his office, or permits another to make appointments or perform any of its duties, is guilty of a misdemeanor, and a conviction for the same forfeits his office, and disqualifies him forever from holding any office whatever under this state.

§ 1834. Appointment avoided by conviction.

A grant, appointment, or deputation, made contrary to the provisions of either subdivision two of section eighteen hundred and thirty-two, or section eighteen hundred and thirty-three, is avoided and annulled by a conviction for the violation of either of those sections, in respect to such grant, appointment, or deputation; but any official act done before conviction, is unaffected by the conviction.

§ 1835. Intrusion into public office.

A person who wilfully intrudes himself into a public office, to which he has not been duly elected or appointed, or who, having been an executive or administrative officer, wilfully exercises any of the functions of his office, after his right so to do has ceased, is guilty of a misdemeanor.

§ 1836. Officer refusing to surrender to successor.

A person who, having been an executive or administrative officer, wrongfully refuses to surrender the official seal, or any books or papers, appertaining to his office, upon the demand of his lawful successor, is guilty of a misdemeanor.

§ 1863. Auditing and paying fraudulent claims upon the state or a municipal corporation.

A public officer, or person holding or discharging the duties of any office or place of trust under the state, or in any county, town, city or village, a part of whose duty is to audit, allow or pay, or take part in auditing, allowing or paying, claims or demands upon the state, or such county, town, city or village, who knowingly audits, allows or pays, directly or indirectly consents to, or in any way connives at the auditing, allowance or payment of any claim or demand against the state or such county, town, city or village, which is false or fraudulent, or contains charges, items or claims, which are false or fraudulent, is guilty of felony, punishable by imprisonment for a term not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

§ 1865. Misappropriation and falsification of accounts by public officers.

A public officer, or a deputy, or clerk of any such officer, and any other person receiving money on behalf of, or for account of the people of this state, or of any department of the government of this state, or of any bureau or fund created by law, and in which the people of this state are directly or indirectly interested, or for or on account of any city, county, village or town, who:

1. Appropriates to his own use, or to the use of any person not entitled

thereto, without authority of law, any money so received by him as such officer, clerk or deputy, or otherwise; or,

2. Knowingly keeps any false account, or makes any false entry or erasure in any account of, or relating to, any money so received by him; or,

3. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account; or,

4. Wilfully omits or refuses to pay over to the people of this state or their officer or agent authorized by law to receive the same, or to such city, village, county, or town, or the proper officer or authority empowered to demand and receive the same, any money received by him as such officer, when it is his duty imposed by law to pay over, or account for, the same,

Is guilty of a felony.

§ 1866. Violations of laws by public officers.

An officer or other person mentioned in the last section who wilfully disobeys any provision of law regulating his official conduct, in cases other than those specified in that section is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or imprisonment not exceeding two years, or both.

§ 1868. Officials not to be interested in sales, leases or contracts.

A public officer or school officer, who is authorized to sell or lease any property, or to make any contract in his official capacity, or to take part in making any such sale, lease or contract, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, except in cases where such sale, lease or contract, or payment under the same, is subject to audit or approval by the commissioner of education, is guilty of a misdemeanor.

§ 1872. Fraudulently presenting bills or claims to public officers for payment.

A person who, knowingly, with intent to defraud, presents, for audit, or allowance, or for payment, to any officer or board of officers of the state, or of any county, town, city or village, authorized to audit, or allow, or to pay bills, claims or charges, any false or fraudulent claim, bill, account, writing or voucher, or any bill, account or demand, containing false or fraudulent charges, items or claims, is guilty of a felony.

XIII. MISCELLANEOUS LAW—MISCELLANEOUS PROVISIONS.**CIVIL SERVICE LAW.***

(Chapter 7 of the Consolidated Laws.)

§ 21. Preferences allowed honorably discharged soldiers, sailors and marines.

In every public department and upon all public works of the state of New York and of the cities, counties, towns and villages thereof, honorably discharged soldiers, sailors and marines from the army and navy of the United States in the late civil war who are citizens and residents of this state, shall be entitled to preference in appointment and promotion without regard to their standing on any list from which such appointment or promotion may be made to all competitive and non-competitive positions provided their qualifications and fitness shall have been ascertained as provided in this chapter and the rules and regulations in pursuance thereof; and a person thus preferred shall not be disqualified from holding any position in the civil service on account of his age or by reason of any physical disability provided such age or disability does not render him incompetent to perform the duties of the position applied for. Whenever any list of eligible persons, prepared under authority of this chapter, shall contain the names of honorably discharged soldiers, sailors and marines entitled to preference as aforesaid, any reference in this chapter or in the rules and regulations in pursuance thereof to the person standing highest on such list shall be deemed to indicate those standing highest of those entitled to preference by the provisions of this section and such persons shall be given preference on any list of registered applicants for employment in the labor service, in accordance with the dates of their several applications as though such applications had been filed prior to those of any persons on such lists not entitled to the preference provided by this section. A refusal to allow the preference provided for in this and the next succeeding section to any honorably discharged soldier, sailor or marine or a reduction of his compensation intended to bring about his resignation shall be deemed a misdemeanor, and such honorably discharged soldier, sailor, or marine shall have a right of action therefor in any court of competent jurisdiction for damages, and also a remedy by mandamus for righting the wrong.

§ 21-a. Retiring veterans of the late civil war and granting them pensions.

Every soldier, sailor or marine of the army or navy of the United States in the late civil war honorably discharged from service who shall have been employed for a continuous period of ten years or more in the civil service of the state of New York and the several cities and counties thereof and who shall have reached the age of seventy years upon his own request, or if employed in manual labor upon being incapacitated for performing manual labor, shall be retired from his employment by the state of New York and the several cities and counties thereof, and thereafter and during his life the state department or institution and the several cities and counties which employed him at the time of his retirement shall pay to him in the same manner that the salary or wages of his former position were customarily paid to him an annual sum equal in amount to one-half the salary or wages paid to him in the last year of his employment; provided, however, that the amount

* Editor's Note.—For a full treatment of this subject see Collier on Civil Service.

so to be paid to such retired veteran shall not exceed the sum of one thousand dollars per annum.

Added by L. 1916, Ch. 438, and amended by L. 1917, Ch. 768, in effect June 6, 1917.

§ 22. Power of removal limited.

Every person whose rights may be in any way prejudiced contrary to any of the provisions of this section shall be entitled to a writ of mandamus to remedy the wrong. No person holding a position by appointment or employment in the state of New York or in the several cities, counties, towns or villages thereof who is an honorably discharged soldier, sailor or marine, having served as such in the Union army or navy during the war of the rebellion, or who is an honorably discharged soldier, sailor or marine, having served as such in the army or navy of the United States during the late war with Spain or the incidental insurrection in the Philippines prior to July fourth, nineteen hundred and two, or who shall have served the term required by law in the volunteer fire department of any city, town or village in the state, or who shall have been a member thereof at the time of the disbandment of such volunteer fire department shall be removed from such position except for incompetency or misconduct shown after a hearing upon due notice upon stated charges, and with the right to such employee or appointee to review by a writ of certiorari. If the position so held by any such honorably discharged soldier, sailor or marine or volunteer fireman shall become unnecessary or be abolished for reasons of economy or otherwise, the said honorably discharged soldier, sailor or marine or volunteer fireman holding the same shall not be discharged from the public service, but shall be transferred to any branch of the said service for duty in such position as he may be fitted to fill, receiving the same compensation therefor, and it is hereby made the duty of all persons clothed with power of appointment to make such transfer effective. The burden of proving incompetency or misconduct shall be upon the person alleging the same. In every county of the state wholly included within the limits of a city but not comprising the whole of such city, no regular clerk or head of a bureau or person holding a position in the classified state civil service, subject to competitive examination, shall be removed until he has been allowed an opportunity of making an explanation; and in every case of removal the true grounds thereof shall be forthwith entered upon the records of the department of the office in which he has been employed, and a copy filed with the state civil service commission. In case of a removal, a statement showing the reasons therefor shall be filed in the department or office where such clerk, head of a bureau or person had been employed. Whenever such offices, positions or employments in every county of the state hereinbefore specified are abolished or made unnecessary, it shall be the duty of the head of the department or office in which such persons had been employed, to furnish the names of the person or persons affected to the state civil service commission, with a statement in the case of each of the date of his original appointment in the service. It shall be the duty of the state civil service commission forthwith to place the names of said persons upon a list of suspended employees for the office or position or for the class of work in which they have been employed, or for any corresponding or similar office, position or class of work, and to certify the said persons for reinstatement or re-employment in the order of their original appointment before making certification from any other list. The failure of any person on any such list for reinstatement or re-employment to accept after reasonable notice, an office or position in the same county and at the same salary or wages as the position formerly held by him, shall be held to be a relinquishment of his right to reinstatement as herein stated. Nothing in this section shall be construed to apply to the position of private secretary, cashier or deputy of any official or department.

Amended by L. 1910, Ch. 264, in effect May 9, 1910.

§ 22-a. Separate eligible list for persons in federal military, naval or marine service.

All persons whose names appear upon any eligible list made pursuant to this article and who have entered or shall hereafter enter or shall obligate themselves to enter the federal military, naval or marine service or who shall be required by draft or conscription to enter the federal service in any capacity and who by reason thereof shall be unable to accept appointments made from names appearing upon any such list shall be entitled to have their names continued and placed on a separate eligible list for the same position resulting from an open competitive examination and names from such separate list shall be certified for appointment at such times as such service shall cease before certification is made from any subsequent eligible list with the same force and effect as if such persons had been so certified before entering federal service as aforesaid. The eligibility for certificate for appointment of a person whose name appears on such eligible list entitled as herein provided shall continue for a period of one year from the date of his honorable discharge from such service.

Added by L. 1918, Ch. 211, in effect April 15, 1918.

§ 23. Compensation of veterans reinstated by order of the courts.

Any honorably discharged soldier, sailor or marine, who having served as such in the Union army or navy during the war of the rebellion, shall have been, or may hereafter be removed from any position held by him by appointment or employment in the state of New York or in the several cities, coun-

ties, towns or villages thereof in contravention or violation of any provision of section twenty-two of this article and who shall have been restored to such position or employment either by a peremptory writ of mandamus of the supreme court or by final order on a writ of certiorari, as authorized by said section twenty-two, shall be entitled to receive and shall receive from said state or the city, county, town or village thereof under which said position or employment was held by him, the same compensation therefor from the date of such unlawful removal to the date of his said restoration to said position or employment which he would have been entitled by law to have received in such position or employment but for such unlawful removal, and such veteran shall be entitled to a writ of mandamus to enforce the payment thereof, but such compensation or salary or wages, due in such position or employment, shall be subject to the provisions of sections four hundred seventy-four and four hundred seventy-five of the judiciary law for services rendered in either or both said special proceedings but otherwise shall be paid only directly to such veteran.

§ 23-a. Removal for treasonable or seditious acts or utterances.

A person in the civil service of the state or of any civil division thereof shall be removable therefrom for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts while holding such position.

Added by L. 1917, Ch. 416, in effect May 8, 1917.

§ 25. Recommendations for appointment or promotion.

No recommendation or question under the authority of this chapter shall relate to the political opinions or affiliations of any persons whatever; and no appointment or selection to or removal from an office or employment within the scope of the rules established as aforesaid, shall be in any manner affected or influenced by such opinions or affiliations. No person in the civil service of the state or of any civil division or city thereof, is for that reason under any obligation to contribute to any political fund or to render any political service, and no person shall be removed or otherwise prejudiced for refusing so to do. No person in the said civil service shall discharge or promote or reduce, or in any manner change the official rank or compensation of any other person in said service, or promise or threaten so to do for giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose. No person in said service shall use his official authority or influence to coerce the political action of any person or body, or to interfere with any election.

§ 26. Political assessments prohibited.

No officer, agent, clerk or employee under the government of the state of New York or any civil division or city thereof shall, directly or indirectly, use his authority or official influence to compel or induce any other officer, clerk, agent or employee under said government, or any civil division or city thereof, to pay or promise to pay any political assessment, subscription or contribution. Every said officer, agent, clerk or employee who may have charge or control in any building, office or room occupied for any purpose of said government, or any said division or city thereof, is hereby authorized to prohibit the entry of any person, and he shall not knowingly permit any person to enter the same for the purpose of therein making, collecting, receiving or giving notice of any political assessment, subscription or contribution; and no person shall enter or remain in any said office, building or room, or send or direct any letter or other writing thereto, for the purpose of giving notice of, demanding or collecting a political assessment, nor shall any person therein give notice of, demand, collect or receive any such assessment, subscription or contribution; and no person shall prepare or make out, or take any part in preparing or making out, any political assessment, subscription or contribution with the intent that the same shall be sent or presented to or collected of any officer, agent or employee subject to the provisions of this chapter, under the government of the state of New York, or that of any civil division or city thereof, and no person shall knowingly send or present any political assessment, subscription or contribution to or request its payment of any said officer, agent or employee. Any person who shall

be guilty of violating any provision of this section shall be deemed guilty of a misdemeanor.

§ 27. Officers or candidates not to promise influence; "public officer" and public employee" defined.

Whoever, while holding any public office, or in nomination for, or while seeking a nomination or appointment for any public office, shall corruptly use or promise to use, whether directly or indirectly, any official authority or influence, whether then possessed or merely anticipated, in the way of conferring upon any person, or in order to secure or aid any person in securing any office or public employment, or any nomination, confirmation, promotion or increase of salary, upon the consideration or condition that the vote or political influence or action of the last-named person, or any other, shall be given or used in behalf of any candidate, officer or party, or upon any other corrupt condition or consideration, shall be deemed guilty of bribery or an attempt at bribery. And whoever, being a public officer, or having or claiming to have any authority or influence for or affecting the nomination, public employment, confirmation, promotion, removal or increase or decrease of salary of any public officer, shall corruptly use, or promise, or threaten to use any such authority or influence, directly or indirectly, in order to coerce or persuade the vote or political action of any citizen or the removal, discharge or promotion of any officer or public employee, or upon any other corrupt consideration, shall also be guilty of bribery or of an attempt at bribery. Every person found guilty of such bribery, or an attempt to commit the same, as aforesaid, shall, upon conviction thereof, be liable to be punished by a fine of not less than one hundred dollars nor more than three thousand dollars, or to be imprisoned not less than ten days nor more than two years, or to both said fine and said imprisonment in the discretion of the court. The phrase "public officer" shall be held to include all public officials in this state, whether paid directly or indirectly from the public treasury of the state, or from that of any civil division thereof, or by fees or otherwise; and the phrase "public employee" shall be held to include every person not an officer who is paid from any said treasury.

§ 28. Taxpayer's action.

The right of any taxpayer to bring an action to restrain the payment of compensation to any person appointed to or holding any office, place or employment in violation of any of the provisions of this chapter, shall not be limited or denied by reason of the fact that said office, place or employment shall have been classified as, or determined to be, not subject to competitive examination; provided, however, that any judgment or injunction granted or made in any such action shall be prospective only, and shall not affect payments already made or due to such persons by the proper disbursing officers, in accordance with the civil service rules in force at the time of such payments.

§ 30. Person employed by state or its civil divisions and cities to take and file constitutional oath.

Every person hereafter employed by the state or any of its civil divisions or cities, except in the labor class as defined in this chapter, before he shall be entitled to enter upon the discharge of any of his duties, shall take and file an oath or affirmation in the form and language prescribed by the constitution for executive, legislative and judicial officers, which may be administered by any officer authorized to take, within the state, the acknowledgment of the execution of a deed of real property, or by an officer in whose office the oath is required to be filed. The oath of every state employee shall be filed in the office of the secretary of state, of every employee of a municipal corporation with the clerk thereof and of every other officer, if no place be otherwise provided by law, in the office of the clerk of the county in which he shall reside. Every employee of the state and of each of its civil divisions and cities in such employ when this act shall take effect, except the labor class as defined in this chapter, shall take and file such oath within thirty days after this act shall take effect. The failure of such employee to take and file such oath shall terminate his employment until such oath shall be taken and filed as herein provided.

Added by L. 1917, Ch. 574, in effect May 19, 1917.

CONSERVATION LAW.

(Chapter 647 of the Laws of 1911.)

ARTICLE 7.

River Improvement.¹

- Section 406.** General powers of commission as to river improvements.
407. Petition for river improvement.
408. Determination upon petition for river improvement.
409. Proceedings upon approval of petition for river improvement.
410. Creation of improvement districts.
411. Proceedings *for final order approving petition for river improvement.
412. Entry upon lands, structures and waters in proceeding for river improvement.
- 412a. Lands constituting a part of forest preserve.
413. Compensation of owners upon failure to agree in proceeding for river improvement.
414. Warrant for payment of owners upon failure to agree in proceeding for river improvement.
415. Bonds for river improvement.
416. Proceedings for apportionment of cost of river improvements.
417. Proceedings for assessment and collection of cost of river improvements.
418. Operation, maintenance and expenses of river improvements and unlawful opening of gates of dam.
419. Duties and qualifications of collectors and other officers.
420. Ratification of proceedings for improvements.
421. State jurisdiction of the improvement of watercourses at private expense.
422. Refund of expenses in certain cases.
423. Limitation of improvements.

§ 406. General powers of commission as to river improvements.

The commission shall have power, subject to the provisions of this chapter, to make plans, specifications and estimates and to enter into contracts for improvements thereunder and to acquire any necessary lands for the regulation by the state of the flow of streams as provided by this act or as shall be authorized by law. Whenever the commission, pursuant to the powers hereinbefore conferred upon it by this chapter, takes cognizance of its own motion of any matter to which this article relates, its procedure in the hearing and determination of the questions involved, the letting of contracts for and supervising of construction, entering upon lands, making compensation to owners, providing moneys therefor, proportioning cost and assessing benefits, shall conform to the provisions, so far as they can be made to apply, governing the like matters in proceedings begun by petition.

¹ Section four hundred and fifty to four hundred and sixty-seven of article seven of this chapter are hereby renumbered respectively and consecutively as four hundred and six to four hundred and twenty-three thereof. L. 1915, ch. 662, § 2. In effect May 20, 1915.

* So in original.

approved by an act of the legislature, the commission shall publish such fact and shall give a hearing thereon as in the first instance with special reference to such increased cost of improvement, and shall await thereafter a further and final approval by subsequent act of the legislature.

§ 410. Creation of improvement districts.

At any time after such final order shall have been approved by the legislature, the commission shall determine what property included in the statement or list, as specified in section four hundred and fifty-three of this chapter, other than counties, towns, cities and villages, is to be benefited by such improvement, and it shall thereupon cause to be made a survey and map showing the lands so determined to be benefited and the name of the owner of each separate parcel so far as practicable, the quantity in each parcel and the boundary lines thereof, and where a parcel is intersected by a town or county line; the quantity in such parcel on each side of the town or county line; and shall give to each parcel a corresponding number on said survey and map; and it shall also cause to be made a brief description or designation sufficient to identify the same, of all other property included in such statement or list so determined to be benefited, with the name of the owner thereof so far as practicable. When said survey and map and descriptions are completed a copy thereof with a certificate of their adoption duly signed by the commission shall be filed in the office of the clerk of each county in which any lands or property so determined to be benefited are situated or exist; and thereafter the commission shall fix a time and place in such county where the owners of said lands and property and other persons interested therein shall have an opportunity to be heard as to the lands and property to be benefited. Notice of the time and place of such hearing shall be given by the commission by notice published at least once a week for two successive weeks immediately prior to the time of such meeting in at least two newspapers published in such county. After such hearings, which may be adjourned from time to time by the commission or by any member thereof, the commission may make any change in its determination as to the lands and property to be benefited; in case of any such change the commission shall make a supplementary survey and map and descriptions, in like manner as is hereinbefore provided with reference to the original survey and map and descriptions, showing such changes, and file in the clerk's office of each county where the lands and properties affected by such changes are situated or exist a copy of such supplemental survey and map and descriptions with a certificate of their adoption duly signed by the commission; and thereupon such original survey and map and descriptions, as modified by such supplemental survey and map and descriptions, if any, shall constitute the final determination of the commission as to the lands and property to be benefited by such improvement. Such final determination may be reviewed in like manner as a review is had of a determination of a board of assessors in making an assessment. Such determination as modified upon such review, if any, shall conclusively fix and establish the lands and properties benefited by said improvement, and the same together with the counties, towns, cities and villages included in said statement or list shall constitute an improvement district; and the proportional share of the total cost of such improvement and of the maintenance thereof so appor-

tioned to the state and the counties, towns, cities and villages as provided in section four hundred and fifty-three of this chapter shall be a charge upon and be payable by the state and said counties, towns, cities and villages respectively, and the proportional share thereof collectively charged upon the lands and properties within such improvement district as in this article provided shall be a lien upon all the lands and properties within such improvement district and shall be borne by and assessed upon and collected from such lands and properties in the manner hereinafter provided.

In case any lands or properties heretofore or hereafter included within an improvement district so fixed and established by the commission shall not for any reason be properly or legally included therein or shall not for any reason be legally liable to assessment and taxation for the cost and expenses of an improvement for which such district has been or shall be so fixed and established, the said lands and properties shall nevertheless constitute and become a part of such improvement district and shall be legally liable to assessment and taxation for the cost and expenses of such improvement and the maintenance of the same and the bonds and certificates issued therefor and the interest thereon in all respects as in this chapter provided, upon recording in the office of the clerk of the county or counties in which such lands or properties are located an instrument in writing duly executed, acknowledged and delivered to the commission by the owner or owners thereof consenting that the said lands and properties shall constitute a part of such improvement district; and thereupon all the provisions of this article shall apply to the improvement or regulation of a watercourse and its tributaries with respect to which such consents shall be so executed and recorded and as to which the lands and properties referred to in such consents shall constitute the improvement district in whole or in part. Jurisdiction is hereby conferred upon the supreme court and the county court of the county in which any of such lands or properties are located to authorize the execution and delivery to the commission of such consent upon such terms as the court shall approve on behalf of an infant or incompetent owner of such lands or properties in the same manner as provided by law with respect to the sale, mortgage or lease of the real property of an infant or incompetent person.

§ 411. Proceedings after final order approving petition for river improvement.

When any such final order shall have been made and approved as herein-before provided, the commission shall advertise two successive weeks in the state paper and in two newspapers published in the county wherein such work is to be performed, and if in more than one county then in each of such counties, and in such other newspaper as shall be deemed of advantage, for bids or proposals for said work to be made in writing for the construction of such dam or dams, dykes or other works according to such plans and specifications. Upon the receipt of the proposals, the commission may enter into a contract or contracts with the lowest responsible bidders for the work to be done, or may reject any or all bids and again advertise for further bids. Before entering into any such contract, a bond with sufficient sureties shall be required, conditioned that the contractor will perform all work within the time prescribed in accordance with the plans and specifications, and will indemnify the state and said commission of and from all liability for damages occasioned or suffered by reason of the negligence or willful fault of such

contractor, his employees or any subcontractor or his employees in doing such work. Partial payments for work actually done may be provided for in the contracts and paid in the manner hereinafter provided to an amount not to exceed ninety per centum of the contract price. The payments due on account of any such contracts or for any necessary expense or work in connection therewith in pursuance of this article shall be paid from the river improvement fund as hereinafter provided for.

§ 412. Entry upon lands, structures and waters in proceeding for river improvement.

The commission may enter upon any land, structures and waters necessary for the purposes of this article so far as the same relates to proceedings for the improvement of rivers and watercourses, and may determine that the right to temporary or perpetual use and occupancy of the property to be taken for the purpose of such improvement is a sufficient title and interest to be acquired therein. If the owner of any property to be taken for such improvement shall agree with the commission upon the sum to be paid therefor, or for the right to use and occupy the same or for any legal damages sustained, such sum shall be paid as hereafter provided as part of the necessary expense incurred for the purposes of such improvement.

§ 412a. Lands constituting a part of forest preserve.

If any of the lands required for such improvement are a part of the forest preserve, the commission must before making the final order cause such lands to be accurately surveyed, and the boundaries and high flow lines thereof accurately fixed, and thereafter hold a public hearing as to whether such lands are required for such public use, and if so required, as to what will be a reasonable return to the state upon the value of the rights and property of the state used, and the services of the state rendered if such improvement be made. Public notice of such hearing shall be published at least two weeks in two newspapers in the city of Albany and in two newspapers in the county in which the lands required are located. If it be determined that such lands are so required, such determination must be incorporated in the final order with a statement of the boundaries, the high flow line, the acreage and the amount required for a reasonable return to the state upon the value of the rights and property of the state used and the services of the state rendered in case such improvement is made. The expenses of any improvement on said lands shall be apportioned like other expenses of the improvement under the terms of this chapter on the public and private property and municipalities benefited to the extent of the benefits received. Any reservoir so constructed on such land shall always be operated by the state, and the legislature at the time of authorizing and directing such improvement shall provide for a charge upon the property and municipalities benefited for a reasonable return to the state upon the value of the rights and property of the state used and the services of the state rendered in case such improvement is made, which shall be collected from time to time as the same shall become due, like other expenses of the improvement, from the public and private property and municipalities benefited. Such reasonable return shall be fixed for terms not exceeding ten years, and be readjustable at the end of any term. Before any such lands shall be flooded, the timber shall be removed therefrom and the construction thereof shall be approved by the commissioner of health as not creating or tending to create any unsanitary condition. The commission may at any time abate any nuisance or unsanitary condition arising during the course of such improvement or the maintenance thereof, and for the purpose may if necessary temporarily discontinue the use of the reservoir causing the same.

Added by L. 1914, ch. 493. In effect Apr. 23, 1914.

§ 413. Compensation of owners upon failure to agree in proceeding for river improvement.

If the commission cannot agree with the owners upon the compensation and legal damages to be paid for the property to be so taken and appropriated, the

commission shall thereupon serve upon such persons a notice that the lands and property described therein have been appropriated by the state for the purposes of this article, and shall proceed to acquire title thereto under the provisions of title one of chapter twenty-three of the code of civil procedure, known as the condemnation law, but service of such notice shall raise no presumption that the lands described therein are private property.

§ 414. Warrant for payment of owners upon failure to agree in proceeding for river improvement.

When proceedings are taken under the condemnation law as provided in the preceding section the commission shall cause to be filed in the comptroller's office a certified copy of the final order provided in section thirty-three hundred and seventy-one of the code of civil procedure, and a certified copy of the judgment therein rendered pursuant to section thirty-three hundred and seventy-three of said code, together with a certificate of the deputy attorney-general assigned to the department that no appeal from such final order and judgment has been or will be taken by the state, or if an appeal has been taken, a certified copy of the final judgment of the appellate court affirming in whole or in part said final judgment. The comptroller shall issue to the said commission, or such officer as it shall direct, his warrant for the payment of the amount due upon such final order and judgment with interest from the date of the judgment until the thirtieth day after the entry of such final order and judgment, and the same shall be paid out of the river improvement fund hereinafter provided for. Such warrant shall be payable to and shall be delivered by the commission or its officers to the owner or owners of said judgment according to the terms thereof.

§ 415. Bonds for river improvement.

To pay the cost of such improvement and all the expenses and liabilities lawfully incurred by the commission under this article in connection therewith and in the maintenance thereof the commission is hereby authorized to issue, in the name of and under the seal of said commission and subscribed by the chairman, in behalf of such improvement district, bonds in a sum not exceeding the amount of the estimated total cost of said improvement and ten per centum thereof in addition thereto, but without liability on the part of the commission or any commissioner personally for the payment thereof or of the interest thereon and without liability on the part of the state beyond the proportion of any assessment to be made or certified against the state on account of said improvement. Such bonds, together with interest thereon at a rate not exceeding five per centum, payable semi-annually, shall be payable by their terms by the state, municipality and by assessment and levy of the taxes upon the lands and properties in such improvement district according to the proportional share thereof determined as herein provided, and they shall be executed when authorized by the commission and attested by the secretary of the department. Such bonds shall be issued in serial form in amounts to be fixed by the commission; they shall by their terms become due and payable as determined by the commission in not exceeding fifty years from the date of issue, and they shall be exempt from all taxation by the state or by any county, town, city, village or other subdivision of the state. Such bonds shall be sold by the comptroller at not less than par and accrued interest, and the proceeds thereof deposited in a national or state bank either at Albany or in one of the counties in which such improvement is made, to be approved by the comptroller and the commission. But before any such deposit is made, the comptroller shall require from the depositary a bond as security for the repayment of same, to be approved by him as to form, condition and sufficiency of sureties, which shall provide for the repayment to the commission upon demand of the moneys so deposited. Moneys received under the provisions of this article for river improvements shall constitute a fund to be known as the river improvement fund, and the portion thereof applicable to each improvement shall be separately kept by

the comptroller, and the same are hereby pledged to the payment of the cost and expenses of such improvement and the maintenance thereof, and the bonds to be issued as in this article provided, so far as the same are applicable to such improvement, and the comptroller is authorized and directed to pay therefrom the principal and interest of said bonds as the same mature and become payable by the terms thereof, and the costs and expenses of such improvement and the maintenance thereof upon the order of the commission or its authorized officer. In case the proceeds of the sale of bonds and interest earned on such proceeds exceed the total amount of the cost and expenses of such improvement, such excess shall be applied by the comptroller to the payment of the principal and interest of such bonds and the maintenance of such improvement.

For the purpose of providing for the expense of maintenance and paying any installment of any interest that may have heretofore accrued or may hereafter accrue on any bonds or certificates issued pursuant to the provisions of this article as well as any installment of principal of such bonds, which may fall due previous to the time that the same can be provided for by the levying and collecting of an assessment as provided in section four hundred and seventeen hereof, the commission is authorized in the manner and subject to the provisions herein provided for the issuing of bonds, to issue certificates of indebtedness from time to time for an amount not exceeding the amount required for such purposes; such certificates shall mature in not to exceed five years from date of issue and may be once renewed for a like period, and shall bear interest at the rate of not to exceed six per centum per annum and shall be sold at not less than par and accrued interest in such manner as the commission may determine, and shall be paid in the manner provided for in section four hundred and seventeen hereof for the payment of other obligations.

Former section 459 renumbered by L. 1915, Ch. 662, and amended by L. 1915, Ch. 615 and L. 1917, Ch. 662, in effect May 26, 1917.

§ 416. Proceedings for apportionment of cost of river improvements.

The commission shall assess upon the lands and properties in such improvement district benefited collectively as determined under the provisions of this article, the benefit accruing thereto by reason of such improvement in the following manner. The commission shall determine, after an investigation thereof, the amount of such benefit received by said lands and properties and shall specify the same in a statement thereof opposite the number of each parcel of land and each designation or description of property corresponding with the number thereof on said survey and map and descriptions of such improvement district with the name of the owner or owners thereof, as the same appear on said map and survey and descriptions; such statement shall be signed by the chairman of the commission and a copy of so much thereof, duly certified by the secretary of the department, shall be filed in the clerk's office of each county as relates to the lands and property included in each county. A copy of such statement shall be served upon the owner or owners of such lands and properties assessed, together with a notice specifying the time and place in the county where the commission shall sit to hear any person interested in or aggrieved by such determination; such service shall be made by delivering the same to each of said owners or to any one of several owners or to the tenant of any such lands or properties or by posting the same upon any such lands or properties; such service shall be made at least fifteen days before such hearing, and said statement and notice shall also be published in at least two newspapers published in the county wherein said hearing is to be held at least two weeks immediately prior thereto. The affidavit of said service and publication shall be evidence thereof. The commission shall sit at the time and place specified in such notice, or at the times and places to which said hearing may be adjourned by the commission, and hear all persons interested in or aggrieved by such determination; after such hearing or hearings the commission may change or modify such determination, in which case it shall specify such change or modification in a statement thereof to be signed and filed in like manner as hereinbefore provided with

reference to such original determination. Any person aggrieved by such determination as originally made or as so modified may review the same in like manner as a review is had of the determination of a board of assessors in making an assessment. And such determination, as so modified and as further modified by any final judgment or order made in proceedings to review the same as herein provided, shall be final and conclusive, and the amount of the total cost and expense of such improvement and the maintenance thereof and the bonds and certificates to be issued as in this article provided and the interest thereon, which said several parcels of land and properties are to pay and bear shall be based upon the amount of the benefit accruing to them respectively as specified in and in accordance with said determination as so modified as hereinafter provided; provided, however, that if any of the properties included in such improvement district and in such determination shall cease to exist, so that no part of the tax to be levied thereon as herein provided can be collected against the same, and due proof thereof shall be made to the commission, the commission may apply to the supreme court for an order to show cause why such property should not be thereafter omitted from the assessment-roll of the town or city wherein the same is situated, as herein provided; such order to show cause shall be served upon the owner or owners of all the properties in such improvement district, so far as the same can be ascertained, in such manner as the court shall direct, and in case the court shall upon the return of said order so direct the said property shall be thereafter omitted from the assessment-roll of said town or city, with the same force and effect in all respects as if the same had not been included in such improvement district, or in said determination. The commission shall annually transmit to the board of supervisors of each county in such improvement district a statement of the amount required to be paid by the lands and properties in said county included in such improvement district, as specified in the determination of the commission, of bonds issued for such improvement maturing during the then ensuing year together with interest thereon, and of the certificates issued by the commission as herein provided remaining unpaid and interest thereon and of the cost of the maintenance of such improvement for such year, which statement shall be approved by the comptroller, and thereupon said board of supervisors shall cause the same to be levied and collected as hereinafter provided.

§ 417. Proceedings for assessment and collection of cost of river improvements.

For the purpose of raising money to meet the said bonds and the interest thereon, and to provide for the costs and expenses of such improvement and the maintenance thereof the commission shall annually transmit to the comptroller a statement of the amount of the proportion thereof to be paid by the state during such year, in conformity with the determination of the commission in respect thereto as provided in this article, and such amount shall be by the comptroller paid into the river improvement fund herein mentioned applicable to such improvement out of the moneys of the state appropriated for that purpose; and the commission shall annually transmit to the clerk of the board of supervisors of each county, the clerk of each town, the mayor of each city, and the president of each village affected by such improvement a statement of the amount of the proportional share thereof to be paid by such county, town, city or village respectively, as determined by the commission, and such county, town, city or village shall cause the same to be assessed, levied and collected in the same manner as provided by law with reference to general taxes, and paid to the treasurer of the county, who shall forthwith forward the same, less his legal fees therefor, to the comptroller to be by him paid into the river improvement fund applicable to such improvement; and the commission shall annually transmit to the clerk of the board of supervisors of each county included in such improvement district a statement of the amount of the proportional share thereof to be borne by the lands and properties collectively in such

improvement district within such county during such year, to be assessed, levied and collected as hereinafter provided. The assessors of each town and city included in such improvement district are hereby required to enter upon a separate page in the annual assessment-roll of such town or city before the delivery thereof to the board of supervisors the description by number corresponding with the number thereof on said survey, map and descriptions so filed in the county clerk's office, each parcel of land and each designation or description of property within the county in such improvement district, together with the name of the then owner or owners thereof so far as the same can be ascertained by the assessors, and set opposite such number and description of each separate parcel or property in the columns of said roll for the total assessed valuation of property the amount of benefit by reason of such improvement received by such parcel or property as stated and specified in the determination of the commission as modified by the court if so modified, on file in the office of the clerk of the county. And the board of supervisors shall each year at the time the annual tax levy is made, levy upon each separate parcel and property in said county within such improvement district appearing upon the assessment-rolls of the towns and cities included therein as herein provided such portion of the amount to be paid by all of the property in said county within such improvement district appearing by the statement of the commission and the comptroller made to said board as in this article provided as the amount so assessed against such parcel or property on said rolls for benefit accruing thereto bears to the aggregate amount so assessed on said rolls against all of said lands and properties, and the said taxes so levied shall be collected in the same manner as general taxes are levied and collected, and shall be a like lien as general taxes until the amount thereof is paid to the general treasurer of the county, superior in force and effect to all other liens except unpaid general taxes; provided, however, that the collection of such tax shall only be enforced by a sale of the land or property assessed. Such taxes when collected shall be paid to the treasurer of said county who shall forthwith pay the same less his legal fees to the comptroller who shall pay the same into the river improvement fund.

§ 418. Operation, maintenance and expenses of river improvements and unlawful opening of gates of dam.

The care, control, operation and maintenance of improvements to rivers and watercourses provided for in this article shall devolve upon the commission. The commission shall have power to charge to each such improvement undertaken such portion of the expenses incurred as he shall determine ratably and equitably, chargeable thereto and to include the same in the apportionment or assessment of the cost and expenses of such improvement. Any person who shall open or close or cause to be opened or closed a gate or gates in any dam constructed under this article so far as the same relates to such improvements or a gate in any head race without the consent of the commission, shall be guilty of a misdemeanor.

§ 419. Duties and qualifications of collectors and other officers.

It shall be the duty of each collector and other official to whom is delegated the performance of any service under the provisions of this article to faithfully perform the same, and the collector of each town and the treasurer or collecting officer of each city whose duty it shall be to collect assessments as herein provided shall before entering upon the discharge of his duties execute to the people of the state an undertaking with two or more sureties in the penal sum of twice the amount to be collected by him, and such undertaking shall be approved and filed in the same manner and with the same force and effect as provided by law with reference to an undertaking for the collection of general taxes, and shall provide that he will well and faithfully perform his duty as collector and will pay over to the treasurer of his county and fully account for all moneys received by him under the provisions of this article within the same time as provided by law with reference to

general taxes. And such collecting officer shall be entitled to receive the same compensation as fixed by law for the collection of general taxes. And each county treasurer whose duty it shall be to receive any assessments or moneys as herein provided shall, before entering upon the discharge of his duties, execute to the people of the state an undertaking in such amount and with such sureties as shall be required by the comptroller, conditioned that he will forthwith pay over to the comptroller upon the receipt thereof by him and account for all moneys which shall come into his hands under the provisions of this article and will well and faithfully perform all the duties required of him thereunder.

§ 420. Ratification of proceedings for improvements.

All proceedings heretofore taken under the provisions of chapter seven hundred and thirty-four of the laws of nineteen hundred and four, and the acts amendatory thereof and supplemental thereto are hereby legalized, ratified and confirmed; but this provision shall not be deemed to dispense with the submission to and approval by the legislature of specific orders, heretofore made by the state water supply commission, for river improvements, pursuant to any requirement of article two of the state boards and commissions law, nor shall the repeal, by this chapter, or any section of such law be deemed to affect such requirement.

§ 421. State jurisdiction of the improvement of watercourses at private expense.

The board of trustees of any village may present to the commission a petition requesting it to assume jurisdiction of the construction of a proposed improvement to a watercourse adjacent to or in the vicinity of such village. Such petition shall state the location of such watercourses, the character of the proposed improvement, the estimated cost thereof, shall set forth the fact that unless such improvement is made such watercourse is a menace to the public health and safety of the inhabitants of such village, and shall request that the commission assume jurisdiction of the construction of such improvement, as provided by this section. The petition must also state that if the commission assumes jurisdiction of such improvement the money needed therefor will be deposited to the order of the commission in a national bank to be designated by it. The petition shall be accompanied by a plan for such improvement, together with an estimate of the cost thereof, prepared by a competent engineer. Upon the receipt of such petition, the commission shall forthwith cause an investigation to be made and shall determine whether the proposed improvement is of sufficient importance to the public health or safety to warrant the commission in assuming jurisdiction. If it shall determine in the affirmative, the commission shall cause to be made an estimate of the cost thereof, and upon the deposit of money in an amount equal to such estimated cost, the commission shall cause such improvement to be made substantially in accordance with the plan proposed by the petition. If such improvement involves the acquisition of land or water rights the commission may acquire the same by condemnation, if unable to agree upon a purchase price, and shall pay the expenses of proceedings and the awards therein out of the money deposited to its credit. If the improvement consists of the construction or improvement of a dam, the petition may state the levels at which it is proposed to maintain the water stored by such dam, and if the commission accepts jurisdiction of the construction of such improvement in accordance with this section, it shall cause the water stored by such dam to be maintained at the level specified in such petition.

§ 422. Refund of expenses in certain cases.

If subsequent to the construction of such improvement at private expense as provided by the preceding section, the state shall improve such watercourse, pursuant to the provisions of this article, and if the dam or other structure so constructed or improved at private expense would naturally constitute a part of the plan of the improvement of such watercourse by the

state, and shall take possession of such improvement and of the dam and other structures and property appurtenant thereto, the person by whom the money to make such improvement was contributed may present a claim therefor to the court of claims. Jurisdiction is hereby conferred upon the court of claims to hear such claims, and if the court shall determine that the improvement was paid for by the claimants and would have naturally constituted a part of the improvement of such watercourse by the state if such improvement had not already been made at private expense and that claimant has suffered legal damages by the act of the state, the court shall award to such claimants the amount of money contributed by them toward such expense not exceeding the actual value of the improvements, and the amounts of such awards shall be payable from the money appropriated for the greater improvement of which such improvement would naturally constitute a part.

§ 423. Limitation of improvement.
Repealed by L. 1915, Ch. 663.

ARTICLE 7-A.

(Added by L. 1915, ch. 662. In effect May 20, 1915.)

River Regulation by Storage Reservoirs.

PART I.

DEFINITION AND CONSTRUCTION.

§ 430. Definitions and construction.

The following words and phrases used in this article are defined as follows:

1. The term "real estate," when used in this article without words of limitation, includes all uplands, lands under water, the waters of any lake, pond or stream, all water and riparian rights or privileges, all water powers, water plants, and all dams, races, sluiceways and machinery connected therewith, and any and all easements and incorporeal hereditaments, and every estate, interest and right, legal or equitable, in land or water, including terms for years, and liens, legal or equitable, on real estate, as above defined, in way of judgment, mortgage or otherwise, and all real estate as above defined acquired or used for railroad, highway, or other public purposes.

2. The term "regulating reservoir," when used in this article, means a basin for impounding water, formed or enlarged by a dam, constructed or maintained for the purpose of regulating the flow of a stream or river and shall be construed to include the dams and dikes or other structures by means of which the water is or is to be impounded, the gate houses, including controlling gates, sluices, screens, racks and other accessories thereto; spillways, fishways, log or ice chutes, or barriers and all accessories thereto; all bridges or roadways over or appurtenant to the dams and dikes; all other structures, devices, or appliances connected with or appurtenant to any of the structures hereinbefore enumerated, in such manner that they cannot be removed without injury to such structures or without impairing the usefulness thereof for the purposes for which they are intended; the lands under the water impounded, or to be impounded, by the dam or dams, and such lands surrounding or adjacent to the dam, or the water impounded or to be impounded thereby, and such other real estate and appliances, including roadways and telephone lines, as shall be necessary for the purposes of the construction, maintenance, or operation, of a regulating reservoir, as above defined, also including such land surrounding such reservoir as may be necessary to preserve and protect such reservoir from unsanitary conditions, and from any encroachment affecting its use for the purpose of regulating the flow of the stream or river for the regulation of which it may be construed. Such term is not intended to include a reservoir created by a dam constructed or maintained for power purposes, but is intended to include a reservoir at or by reason of which there may be, as an incident to the construction, maintenance and operation of such regulating reservoir, the possibility of the utilization of a portion of the water stored thereby for power purposes, without in any way interfering with the primary purpose of a reservoir constructed under the provisions of this article.

3. The term "benefit or benefits," when used in this article, shall be interpreted to include benefits to real estate, public or private, to municipal water supply, to navigation, to agriculture, and to industrial and general welfare by reason of the maintenance and operation of a regulating reservoir, whether such benefit shall inure to a person, a public corporation as herein-after defined, or the state. In the event that any regulating reservoir operates to relieve the state of any obligation by reason of diversion of the water of any river for canal purposes, the state, to the extent that the maintenance and operation of such reservoir may accomplish such relief, shall be deemed to have received benefit therefrom.

4. The term "water power" when used in this article shall be construed to mean power developed from falling or flowing water, and all electrical current and other forms of energy into which such power may be transformed.

5. The term "commission" when used in this article shall mean a commission consisting of the conservation commissioner, or a deputy designated by him, the attorney-general, or a deputy designated by him, and the state engineer, or a deputy designated by him. The word "board" shall mean the river regulating board of a district. The term "state engineer" when used in this article shall mean the state engineer and surveyor.

6. The term "preliminary expenses" when used in this article shall be construed to mean expenditures made or incurred by the state on account of the services or expenses of its officers or employees in making studies, investigations, surveys, plans, specifications and estimates; in negotiating, drafting, and letting contracts; in supervising and directing the construction of works and structures, as authorized or required by this article; and the expenses of procuring searches, or abstracts of title of real estate for the purpose of carrying out the provisions of this article.

7. The term "person" when used in this article, and not otherwise specified, shall be interpreted to mean, person, firm, copartnership, association, or corporation, other than a county, town, city, village, or other political subdivision. The words "public corporations" shall be interpreted to mean counties, towns, cities, villages, corporations created under this article and all other governmental agencies clothed with the power of levying general taxes.

8. The word "regulation" when used in this article shall be interpreted to mean only such regulation as can be had through the construction, maintenance and operation of regulating reservoirs, excepting as in this article otherwise expressly provided.

9. The words "average flow" when used in this article shall be construed to mean that result in terms of cubic feet of water per second derived by the division of the total number of cubic feet of water flowed by any stream or river, at the location thereon where the measurement is taken, in one year, or for an average of years, by the number of seconds in a year.

10. The words "average normal flow" when used in this article shall be construed to mean that result in terms of cubic feet of water per second derived by the division of the total number of cubic feet of water flowed by any

stream or river, at the location thereon where the measurement thereof is taken, on those days in a year during which such flow did not exceed the average flow, by the number of seconds in the total number of such days.

11. Whenever the term "publication" is used in this article and no manner specified therefor, it shall be taken to mean publication for once a week for three consecutive weeks in each of two newspapers, if such papers there be, of general circulation in the county or counties wholly or partly within a river regulating district. It shall not be necessary that publication shall be made on the same day of the week in each of the three weeks; but not less than fourteen days (including the day of the first publication) shall intervene between the first publication and the last publication, and the publication shall be complete on the date of the last publication.

12. The words "cost of construction" when used in this article shall be construed to include in addition to the cost of a regulating reservoir, all preliminary expenses, all expenses of organization of the district, engineering fees, costs of surveys, plans, advertising, salaries, compensation and expenses of the board, together with all legal and other expenses, incidental to the construction of such reservoirs up to time of the completion thereof.

13. The words "cost of maintenance and operation" when used in this article shall be construed to include all such expenses for repairs and upkeep of the regulating reservoir, all such expenses necessary to the proper operation of such reservoir for the purposes for which it was constructed and all such part of the compensation and expenses of the board, its officers and employees after the completion of such regulating reservoir as are in the judgment of the board and the commission properly chargeable thereto.

14. The words "high flow line" when used in this article shall be construed to mean the line which will be made around a reservoir by the water therein when it is at the level of the crest of the reservoir spillway.

15. The words "low flow line" when used in this article shall be construed to mean the line made by the water of a reservoir when it is at the lowest level which, consistent with the regulation of the flow of the river and the maintenance of sanitary conditions, the board with the approval of the commission shall fix and determine.

16. The words "unsanitary condition or conditions" when used in this article shall be construed to mean such condition or conditions are a menace to the public health.

PART II.

CREATION OF RIVER REGULATING DISTRICTS.

§ 431. River regulating districts to be public corporations.

Bodies corporate, which shall be known as river regulating districts, with all the powers of public corporations, having perpetual existence with power to sue and be sued, to incur debts, liabilities and obligations, to exercise the right of eminent domain, and of taxation and assessment, to issue bonds and to do all acts and exercise all powers authorized in and subject to the provi-

sions of this article, may be created as in this article provided. Such river regulating districts are declared to be public corporations.

Any watershed of the state or any integral part of any such watershed may be created into a river regulating district pursuant to the provisions of this article.

§ 432. Creation of district.

Any person or public corporation may present to the commission a petition for the organization of a river regulating district pursuant to the provisions of this article. Any such petitioner shall be a resident or owner of real estate within the proposed district, or if a public corporation, one whose boundaries lie wholly or partly within such district.

The petition shall set forth:

1. The proposed name of the said district, as the _____ river regulating district.

2. The necessity for the organization of such district, the purposes to be accomplished thereby and the benefits to inure from the exercise of its powers.

3. A general description of the territory included in the proposed district. Said description need not be given by metes and bounds, or by political subdivisions, but it shall be sufficient to state that the territory to be included in the proposed district constitutes the watershed of the particular river in reference to which the petition is filed stating generally the extent of such watershed. In the event that the district sought to be organized does not include the whole watershed of the particular river, but only the watershed of a tributary of the river, then, the petition should generally set forth the extent of such watershed, the reason why the watershed of the tributary should be organized as a separate river regulating district, and the relation of the regulation of the flow of such tributary to and effect upon the flow of the river to which it is tributary.

4. The extent of the regulation possible through the construction and operation of reservoirs.

5. Whether state or private lands, or both, will be required, and in general the extent thereof, and all such facts as would show or tend to show the public necessity for the regulation of the flow of the river.

§ 433. Action upon petition.

Immediately upon the receipt of such petition, the commission shall cause notice by publication to be given of the pendency of the petition, and of the time and place of a hearing thereon, and may appoint times and places for further hearings if deemed by it to be desirable.

§ 434. Hearing on petition for creation of district.

Any person or public corporation to be affected by the organization of the proposed district, may on or before the day set for such hearing or at subsequent hearings if any, file objections to and state reasons against the organization of such district.

Upon the said hearing or hearings, if it should appear that the purposes of this article would be subserved by the creation of the river regulating district as prayed for, the commission shall thereupon, by final order, so determine and declare. It shall thereupon prepare and file a map of such district with a certificate of its determination, creating such district and showing the name, extent, and purpose of the district, with the secretary of state and with the county clerk of each county wholly or partly within the district, and shall give notice by publication of such determination, order and filing. Unless within forty days after such filing and publication of notice thereof proceedings have been taken by a person who is a freeholder within such proposed district, or by a public corporation therein upon notice to the attorney-general of the state, or by the attorney-general of the state, to review the determination and order of the commission by certiorari, such determination and order shall be final, and the district shall thereupon be a river regulating district of the state of New York, and a public corporation with all rights and powers granted by this article. No such review shall be had excepting at the instance of the attorney-general of the state unless prior to the application for the writ the party seeking the review of the determination shall file a bond or undertaking in a sum to be fixed by the supreme court or a justice thereof with good and sufficient sureties to be approved by the court or a justice thereof agreeing to pay all costs and expenses caused by such review as determined by the court in the proceeding in the event of failure to set aside or modify the determination and order of the commission creating such district.

After such a river regulating district shall have been created as a public corporation hereunder, the certificate creating the same shall be final and binding upon all the public corporations and real estate within the district, and shall finally and conclusively establish the regular creation and organization of such district. The organization of said district shall not be directly or collaterally questioned in any suit, action or proceeding except as herein expressly provided.

§ 435. Recording certificates and other documents.

Copies of said certificate certified by the secretary of the commission shall be recorded in the office of the secretary of state and in the office of the county clerk of each county partly or wholly within the district and in the event of a review any order or judgment of the court thereupon shall be likewise recorded and county clerks and the secretary of state shall receive for filing and recording such copies and all papers to be filed and recorded by them under the provisions of this article, such fees as are, or hereafter may be, provided by law for like services in similar cases, and such fees shall be a part of the preliminary expenses.

PART III.

ORGANIZATION OF DISTRICT.

§ 436. Appointment of board.

Within thirty days after the incorporation of a river regulating district as hereinbefore provided, the governor shall appoint three persons, two at least of whom shall be resident freeholders within the district, as a board to be

known as the board of river regulating district; one for a term of three years, one for a term of four years, and one for a term of five years. At the expiration of their respective terms of office, appointments shall be made for terms of five years. The governor shall fill any vacancy on said board within thirty days after it occurs.

§ 437. Compensation.

The members of the board shall each receive as compensation for their services the sum of ten dollars a day for each day's service performed and in addition all necessary expenses incurred in the performance of their duties. Such compensation and expenses for any member shall be approved by the board and commission before being paid.

§ 438. Organization of board.

Each member of such board, before entering upon his duties, shall take and subscribe the constitutional oath of office, which oath shall be filed in the office of the secretary of state. Upon taking the oath, the board shall choose one of its number president, and shall select some suitable person or persons to act as secretary and treasurer, who may or may not be a member of the board. It shall adopt a seal, and shall keep in well bound books a record of all its meetings and proceedings, certificates, contracts, surety bonds, and corporate acts, which shall be open to the inspection of the commission, the members thereof and all owners of real estate in the district and all other interested parties.

Each member of the board and the secretary and treasurer, shall before entering upon the performance of his duties as such, execute and file with the comptroller a bond to the people of the state in the sum of not less than ten thousand dollars, with sureties to be approved by the comptroller, conditioned for the faithful performance of his duties, and that he will account for and pay over pursuant to the law all moneys received by him as such officer.

§ 439. Quorum.

A majority of such board shall constitute a quorum, and a concurrence of a majority in any matter shall be sufficient for its determination.

§ 440. Duties of the secretary.

The secretary shall keep and be the custodian of the records of the board, and of its corporate seal, and shall assist the board in such particulars as it may direct in the performance of its duties. He shall attest under the corporate seal of the district all certified copies of the office records and files of the district that may be required of him by the provisions of this article or by any person ordering the same and paying the reasonable cost of transcription. Any portion of the records so certified and attested shall prima facie import verity. The secretary shall also serve as treasurer of the district unless a separate treasurer is selected by the board.

§ 441. Other employees.

The board may with the approval of the commission employ such attorneys, engineers, agents and assistants as may be needful, and fix their compensation, including the compensation of its secretary and treasurer.

§ 442. Governor may remove members of board.

The governor may remove a member of such board for inefficiency, neglect of duty or misconduct in office, giving to him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel in his own defense upon not less than ten days' notice. If such member shall be removed the governor shall file in the office of the secretary of state a complete statement of all charges made against such member and his findings thereon, together with a complete record of the proceedings.

PART IV.**DUTIES AND POWERS OF BOARD.****§ 443. To prepare general plan.**

Upon its organization the board may prepare a plan for the regulation of the flow of the river or rivers in its district. Such plan shall show the available and feasible reservoir sites on such river or rivers, whether any reservoir now existing can be and should be enlarged and to what extent, the approximate number of acres of land flowed or to be flowed by each reservoir, whether any of such land is owned by the state and if any, how many acres, the number of acres of private land required, together with the estimated value of the land, and how many acres, if any, of such land are lands of the state within the forest preserve. Such acreage shall include such quantity of land surrounding the reservoir to be created or enlarged as would in the judgment of the board be required for the protection, maintenance and operation of such reservoir; said plan shall be accompanied by such maps, profiles and other data and descriptions as may be necessary to set forth properly the location and character of the work and of the property to be taken or damaged, and by estimates of cost of each such reservoir. In case maps, plans and specifications, for any such reservoir at or near the site thereof, are on file in the office of the commission, and in case any records in any other department of the state government would be an aid in the preparation of such plans, these shall be available to the board for such purpose. Upon the completion of such plan if the board approve of such plan it shall certify it to the commission for its approval, and the commission within forty days thereafter may approve the same, or modify it and approve it as so modified. As so approved by the commission it shall be known as the "official plan" for the regulation of the flow of the river or rivers, of the district. Copies thereof shall be filed in the offices of the board, the commission, and of the county clerk of each county wholly or partly within the district. Such plan in like manner may be altered from time to time provided such alteration shall not affect any assessments already made.

§ 444. May enter upon lands.

The board and its authorized agents may enter upon any lands as in its judgment may be necessary for the purpose of making surveys and examinations to accomplish any purpose authorized by this article, being liable for actual damage done.

§ 445. General powers.

The board on behalf of such district shall have and may exercise all the powers enumerated in section four hundred and thirty-one of this article and in addition thereto all such other powers as are necessary and proper to carry into execution the powers expressly granted to it; it shall have charge of the operation of all reservoirs now in existence, or hereafter constructed for the regulation of the flow of the river and its tributaries of the district which it represents, not including, however, any reservoirs which are or may be maintained primarily to provide water for the canal system of the state.

Said board, on behalf of such district, subject to the limitations of this article, shall have a dominant right of eminent domain over the right of eminent domain of public corporations, except cities. In the exercise of this right, due care shall be taken to do no unnecessary damage to other public utilities, and in case of failure to agree upon the mode and terms of interference, not to interfere with their operation and usefulness beyond the actual necessities of the case, due regard being paid to the other public interests involved.

§ 446. Acquisition of real estate.

Said board on behalf of such district shall, subject to the limitations herein contained, have the right to condemn for the use of the district any real estate which, in its judgment, shall be necessary for the purpose of carrying out any of the provisions of this article. It may acquire title to such real estate by agreement with the owner thereof upon the amount of compensation to be paid such owner. If any real estate belonging to any county, city, town, village or school district is required for the purposes of this article, the board of supervisors for such county, the mayor and common council for such city, the town board for such town, the village board for such village, the trustees of any school district for such district, or any persons, body or bodies, having a like power, acting for such public corporation may grant or surrender such real estate for such compensation as may be agreed upon by such official representatives and the board. The compensation agreed upon as thus provided shall be paid to the fiscal officer of the public corporation or the person or persons from whom such real estate is acquired.

Title to any such real estate owned by any infant or incompetent person may be acquired on behalf of the board in the same manner as provided by law with respect to the sale, mortgage or lease of real property of such infant or incompetent person upon such terms as the supreme court or the county court of the county in which such real estate is situated may provide, and for such purpose jurisdiction is hereby conferred upon said courts.

If the board cannot agree with the owners upon the compensation and damages to be paid for the real estate so taken, it shall thereupon serve upon such owners a notice that the real estate described therein has been appropriated by the board for the purposes of this article, and shall proceed to acquire title thereto under the provisions of title one, chapter twenty-three of the code of civil procedure, known as the condemnation law.

Title to all real estate acquired pursuant to the provisions of this article excepting as in this article otherwise expressly provided, shall be taken in the name of the state of New York, and when so taken shall be deemed to be taken for a public use.

All real estate acquired or taken pursuant to the provisions of this article

is hereby dedicated to the use and purposes for which it is so taken, and the right, title and interest acquired by the state therein is so acquired subject to such use and purposes.

§ 447. Cemeteries.

Whenever for the purposes of this article it shall be necessary to appropriate or use any portion of any lands or premises now occupied by graves, burial places, cemeteries, or other places of interment of human remains, the board may acquire the same in the same manner as other real estate may be acquired by it. The board having so acquired title shall cause to be published in two newspapers in the county where such burial place or places or graves are situated, which shall in its judgment be best calculated to notify the persons or parties interested or entitled to such notice, which notice shall describe the location of such burial place, cemetery or grave in such manner as to sufficiently identify the same. Such publication shall be made once in each week in each of said newspapers for the space of four weeks, and such notice shall also contain a statement to the effect that any person or persons legally entitled to direct as to the disposition of any such remains may remove the same to any other cemetery or burial place within sixty days after the last publication of such notice, if they so elect, but without expense to the board therefor. From and after said period of sixty days from the last date of publication, the board shall advertise for bids for the removal of such remains by contract, and their proper reinterment as hereinafter provided. All removals and transportation of such human remains shall be done in accordance with the provisions of the public health law and the local rules or ordinances of any town, city or village wherein such cemetery, burial ground or graves shall be located or wherein any of such remains may be reinterred. The board may acquire such other lands as it deems necessary within the county where such burial place or places or graves are now located for the purpose of properly reintering such removed remains, which lands shall be acquired in the same manner as provided by this article for the acquisition of other lands, title to be taken in the name of the particular river regulating district, but lands shall not be acquired within the corporate limits of a village or city except within the bounds of an existing cemetery unless by consent of the board of trustees of the village or common council of the city or other authorities within such village or city occupying similar positions as trustees or aldermen respectively. The lands so acquired shall be suitably and properly fenced or inclosed, and in such manner as to permit of proper ingress and egress thereto before the final completion and payment for said work, and the expense therefor shall be included within the estimate and contract for such removal. All the bodies removed by such contractor, or by order of the board shall, when distinguishable, be incased each in a separate box or coffin, and each monument, headstone, footstone, slab, board or other designation or distinguishing mark shall be properly removed and reset at the grave of each body at the time of such reinterment. Members of the same family shall be interred in contiguous graves. Whenever any person or persons legally entitled to direct as to the disposition of any remains now interred in such cemeteries, burying place or graves shall request the board, in writing, to reinter such remains in any other cemetery or burial plot, within the same county where such cemetery, burial place or graves sought to be removed are located, the board shall cause such remains to be interred where requested within the same county, and shall carefully and properly remove such remains to such burial plot and properly reinter the same,

but no payment shall be made for a grave or graves or burial plot for such reinterment other than that acquired by the board as hereinbefore provided. Whenever any person or persons legally entitled to direct as to the disposition of any human remains exhumed or to be exhumed from any cemetery, burial place or graves as herein provided, desire to remove the same for reinterment to any burial plot or cemetery not within the same county from which such remains were exhumed as herein provided, such person or persons so entitled to designate such other burial place or plot shall be permitted to remove such exhumed remains from such county, subject to the written consent of the board and the provisions of the public health law, and the local rules or ordinances of any town, city or village wherein such cemetery, burial ground or graves shall be located, or wherein such human remains may be reinterred, but no portion of the expense of such transportation or burial in another county shall be borne by the board. The board shall pay all expenses connected with such removal, out of the general fund of the district in the same manner as other payments are made. Whenever any lands acquired by the board for the purposes of reinterment of human remains as herein provided, and all the remains so interred have been exhumed from a cemetery, burial place or grave belonging to a corporation organized under the religious corporations law, the membership corporations law, or by special act, or belonging to a town or board of trustees elected pursuant to the provisions of the town law, or to a village or city, the board shall by a proper resolution, after completion and acceptance thereof and final payment for all work performed as provided in this section, execute and deliver in the name of the district, and without expense to the grantee therefor, to the trustees or other governing body of such corporation, by whatsoever name or title they may hold office, or to the board of trustees of a town burial ground, and to their successors in office, a quitclaim deed covering the lands so acquired, together with all structures erected thereon; and where such lands were so acquired for the purpose of reinterment of human remains exhumed from a public or private cemetery, burial place or grave which shall have been used by the inhabitants of any town in this state as a cemetery or burial ground for the space of fourteen years and not having a board of trustees pursuant to the provisions of the town law, the board shall by proper resolution as provided by this article, after completion and acceptance thereof, and final payment for all work as by this section provided, execute and deliver in the name of the board, and without expense to the grantee therefor, a quitclaim deed or other proper release to such town wherein such lands so acquired as provided by this section may be situated, and such cemetery or burial place shall from and after the execution and delivery thereof be deemed to be vested in such town, and shall be subject in the same manner as other corporate property of towns, to the government and direction of the electors in town meeting, excepting, however, that where such lands so acquired for the purposes set forth in this section are situated within the corporate limits of a village or city, such quitclaim deed or lease herein provided for shall be executed and delivered to such village or city and thereafter be and become the property of such village or city and subject to the laws governing such village or city. From and after the date of the execution and delivery by the board, as by this section provided, of the quitclaim deed or release, the board

shall be deemed to be divested of all right and title to said lands so quitclaimed or released and shall not thereafter be liable for the care, custody, maintenance and control thereof. This section does not limit any existing rights of burial, or removal of remains under other provisions of law applicable thereto.

§ 448. Measure flow of river.

The board shall also have the right to establish and maintain stream gauges, rain gauges, and may make such surveys and examinations of rain fall, stream flow and flood conditions, and of other scientific and engineering subjects as may be necessary and proper for the purposes of the district and shall preserve a record thereof.

§ 449. Rules and regulations.

The board shall have power to make all necessary rules and regulations which shall be effective when approved by the commission.

PART V.

CONSTRUCTION OF RESERVOIRS.

§ 450. Preliminary plans.

If the board shall determine that as a part of the official plan a reservoir should be constructed for the regulation of the flow of the river or rivers of the district, it shall cause to be prepared preliminary plans and specifications of such reservoir with estimates of the total cost thereof together with a survey of the lands upon which the same is to be constructed, giving the location thereof, and of all lands to be taken, flowed or damaged, with a description by survey or otherwise, showing the amount of lands belonging to the state and to persons or public corporations and the amount of lands of the state in the forest preserve affected thereby. The board shall also cause a map to be made, showing all such lands, the number of acres in each separate tract, the names of the owners and occupants thereof, so far as the board can ascertain the same. Such maps shall also show the high flow lines of the proposed reservoir. It shall also prepare a statement of the amount of water power, if any, which consistent with the proper regulation of the flow of the river may be developed at or by reason of such reservoir by the withdrawal of water for power purposes directly therefrom with an estimate of the value thereof. The board shall also prepare a statement showing the public corporations and persons, owners of real estate to be benefited by the improvement and how and whether the state will be benefited thereby and the public necessity for the improvement and showing the proportionate share of cost which should be borne by the state, by public corporations, respectively, and by persons—owners of real estate benefited collectively, expressed in decimals. In the event that any of the real estate required for such reservoir shall belong to the state, the value thereof shall be determined in the estimates, as hereinbefore provided, and in the event that such land is outside the forest

preserve and the state is chargeable with any proportion of the expenses, such value shall be deducted from the amount to be paid by it, and shall be chargeable as a part of the expenses of the improvement. When said board shall have completed such preliminary plans, maps, specifications, estimates and statements, it shall certify the same with its approval thereof to the commission, which shall have power after hearing the board, to modify such maps, plans, specifications, estimates and statements, or any of them, and within forty days after receipt thereof shall approve the same as certified to or modified by it, and shall certify the same as approved by it to the board. The board shall thereupon cause the preliminary plans, maps, specifications, estimates and statements so approved to be filed in the office of the county clerk of each county having lands within said district, and in the office of the state engineer and of the commission.

§ 451. Hearing.

Upon the completion and filing of such preliminary plans, maps, specifications, estimates and statements, as aforesaid, the board shall forthwith give notice by publication of the filing thereof, and of the time when and the place where it will give a hearing to persons and public corporations interested therein, which hearing shall be not more than twenty days after such publication. At such hearing any person or public corporation interested, or any state officer, may appear and make objection to, or suggest any modification in, such plans, maps, specifications, estimates, and statements, such objections or suggestions to be in writing and duly verified. Said board shall have power for good cause to adjourn said hearing from time to time without republication. Upon the completion of such hearing the board shall determine whether such proposed improvement should be proceeded with, and what, if any, modifications should be made in such plans, maps, specifications, estimates and statements. If said board shall determine that said maps and plans specifications, estimates and statements should be modified in any respect, it shall certify its proposed modifications to the commission, which, after hearing the board shall determine what, if any, modifications should be made therein, and as modified by them shall approve the same and certify the same with their approval to the board, which modified plans, maps, specifications, statements and estimates shall be filed by it as hereinbefore provided for the filing of the original thereof. If said board shall finally determine that the proposed reservoir shall be made, it shall thereupon make a final order directing the same to be made, and shall cause such final order or certified copies thereof to be filed and recorded in the office of the county clerk of each county in which any lands within said district are located, and in the offices of the attorney-general, state engineer and the commission, and forthwith give notice by publication of the making and filing such final order.

§ 452. Review by certiorari.

Any person or public corporation affected by the final determination of the board may review such final determination by certiorari, upon notice to the attorney-general of the state, or the attorney-general may cause the same to be so reviewed. Unless application shall be made for a writ of certiorari

within thirty days after the filing of said final order, as herein provided, the said plans, maps, specifications, statements and estimates shall be the established and final plans, maps, specifications, statements and estimates of such reservoir. In event that upon such review there shall be any modification by the court of said final order, maps, plans, specifications, statements and estimates, the court shall direct the modification thereof by order, and the board shall cause such order to be filed and recorded in each place where the final order was filed and recorded.

No review of the final determination of said board, shall be had unless at the time of the application for the writ of certiorari the person or public corporation seeking the review shall give an undertaking approved by the supreme court, or a justice thereof, as to form, amount, and sufficiency of sureties that in the event of failure to modify said final determination, he or it will pay to the board all such costs and expenses as are incurred by it on account of the certiorari proceedings, as shall be determined by the court.

§ 453. Alterations in plans.

The board shall have power to make such minor changes in the said final map, plans and order as the nature of the work may require, provided that such changes shall not add to exceed ten per centum to the cost of executing the plans embraced in such final order; and provided further, that if any such minor changes shall add more than ten per centum to the cost of any such regulating reservoir, the board shall publish such fact and shall give a hearing thereon as in the first instance with special reference to such increased cost of such reservoir.

§ 454. Appropriation for state's share of expense.

In the event that in any such plans, estimates and statements, a charge is made against the state for any share of the expenses of the proposed reservoir, not including therein such preliminary expenses as may have been necessary, no such reservoir shall be made under this article pursuant to any such final order until the legislature shall make appropriation to pay the state's share of such expenses. The sum so appropriated shall be paid into the general fund of the river regulating district for which it is appropriated.

§ 455. Payment for real estate.

When any such final order shall have been made, and the legislature shall have made appropriation for any share of the expense payable by the state, if any, the board shall proceed as herein provided to the acquisition of such real estate as may be necessary for the construction, maintenance and operation of such reservoir.

When proceedings are taken under the condemnation law, the board shall file in the comptroller's office a certified copy of the final order provided for in section three thousand three hundred seventy-one of the code of civil procedure, and a certified copy of the judgment therein rendered, pursuant to section three thousand three hundred seventy-three of said code, together with the certificate of the attorney-general that no appeal from such final order and judgment has been made, or will be taken by the state, or if an appeal

has been taken, a certified copy of the final judgment of the appellate court. Payments of the amount due upon such final order and judgment with interest from the date of the judgment until thirty days after the entry of such final order and judgment, and payments for real estate taken by agreement, shall be made out of the general fund of the district.

§ 456. Contracts for work.

When it is authorized to proceed with such work as hereinbefore provided, the board shall advertise for bids and proposals for constructing said work according to the plans and specifications, by publishing the notice stating the time when and place where such bids or proposals will be received, once a week for four successive weeks in two newspapers published in the city of New York, one of which shall be published in the interests of engineering and contracting, and in one newspaper in each county wholly or partly within the district. The advertisement shall be limited to a brief description of the work proposed to be let with an announcement stating where the maps, plans and specifications are on exhibition and the terms and conditions on which bids will be received and such other matters as may be necessary to carry out the provisions of this article. In such notice the board shall reserve the right to reject any or all bids and again advertise for further bids. The proposals received pursuant to such advertisements shall be publicly opened and read at the time and place designated. Every proposal must be accompanied by a deposit in the form of a certified check upon some national or state bank or trust company within the state in good credit and payable to the board for five per centum of the amount of the proposal. In case the proposer to whom such contract shall be awarded shall fail or refuse to enter into such contract within the time fixed by the board, said deposit shall be forfeited to the board and paid by it into and become a part of its general fund. In case the contract be made such deposit shall be returned to the contractor. Before entering into any such contract a bond with sufficient sureties to be approved by the board shall be required conditioned that the contractor will perform all work within the time prescribed in and in accordance with the plans and specifications and will pay to the state, the regulating district and the board all damages, costs and expenses suffered or incurred by all or either of them by reason of the neglect or fault of such contractor or his employees or any sub-contractor or his employees in the performance of said contract or in doing such work thereunder. Such contract may provide for partial payments to be made from time to time upon the certificate of the engineer in charge of the work after due inspection thereof for an amount not exceeding ninety per centum of the contract price or the work actually done as shown by said certificate. Such certificate must state the amount of the work performed and its total value, at the price fixed by said contract, but in all cases not less than ten per centum of the estimate thus certified must be retained until the contract is completed and approved by the engineer in charge of the work and by the state engineer.

The board may divide the work into several parts and let separate contracts therefor. All contracts before being entered into shall be approved by the commission.

No reservoir shall be constructed until provision shall have been made by the board for the removal from the reservoir site of all timber and all timber growth on lands within the high flow line thereof, such timber and timber growth to be removed and disposed of by the board by contract or otherwise and the proceeds of the sale thereof shall be paid into the general fund of the district. The board shall not permit to remain upon a reservoir site above the low flow line of the reservoir any stumps which shall extend higher than four inches above the bed of the reservoir adjacent thereto. In the preparation of the reservoir site the board shall do such work as may be necessary to prevent stagnant pools above the low flow line thereof.

PART VI.

ASSESSMENTS.

§ 458. Apportionment of benefits.

As soon as the total cost of such reservoir, including compensation for real estate and all damages suffered by reason thereof, and all expenses necessarily incurred or to be incurred in connection therewith, less the amount thereof chargeable to the state, can be estimated, the board shall make a complete and verified statement thereof. It shall apportion such cost between the public corporations and owners of real estate benefited as according to their judgment they may be respectively benefited by said improvement. Such apportionment shall be made in writing, and shall specify the proportion thereof to be paid by each public corporation for the public benefits, if any, which each as a whole will receive therefrom, and it shall specify the proportion thereof to be paid by each owner of real estate for benefits thereto. The board shall prepare, or cause to be prepared, a list showing each parcel of real estate benefited, together with the name of the owner thereof, so far as the same can be ascertained. The board or some member or members thereof shall view the premises and determine the proportion of benefit received by each parcel. The board shall thereupon cause to be prepared a statement of their determination, showing the parcels benefited, with the proportion of benefit received by each. The board shall express such proportions of benefits in decimals, and shall determine whether the assessments made in accordance with the same shall be paid by public corporations or persons in one assessment or in annual assessments not exceeding fifty in all. Such apportionment and determination shall be presented to the commission for its approval. Upon the completion of such apportionment and determination and the approval thereof, the board shall cause a copy thereof to be served upon the chairman of the board of supervisors of each county, the mayor of each city, the supervisor of each town, the president of each village, named in said apportionment, or if service cannot be had upon such chairman, mayor, supervisor or president, then upon a supervisor of the county, an alderman of the city, a member of the town board of the town, or a trustee of the village, by delivering the same openly to one of the members thereof while in session. Such apportionment and determination shall be so served at least fifteen days before the hearing hereinafter

provided for. A copy thereof shall also be filed in the office of the county clerk of each county wholly or partly within the district and notice of such filing and that such apportionment may be there inspected and of a time when and place where such board will meet to hear any public corporation or person interested or aggrieved thereby shall be given by publication. The affidavit of the person serving or publishing such notice shall be evidence of such service or publication. The board shall meet at the time and place specified and hear all persons and public corporations interested in or aggrieved by such apportionment. After such hearing, the board may with the approval of the commission modify or alter such apportionment, in which case it shall serve and file a copy of such modified apportionment as in this section provided with reference to serving and filing the original apportionment: Any public corporation or any person deeming it or himself aggrieved may upon notice to the attorney-general review the determination of the board in the same manner as a review is had of the determination of a board of assessors in making an assessment. Such apportionment as so modified and as further modified by any final judgment or order made in proceedings to review the same as herein provided shall be final and conclusive and the amount of the total cost and expense of such reservoir and the maintenance and operation thereof including the amount of a reasonable return to the state as herein provided for, which each said public corporation and each said parcel of real estate is to pay and bear shall be based upon the proportion of benefit inuring to them respectively as specified in said apportionment.

§ 459. Assessments; how levied and collected.

The board shall then make a final statement of the cost and the expense of such improvement, and of the apportionment thereof, and file the same as hereinafter provided. It shall state the total amount of said costs and expenses, and the public corporations benefited thereby, together with the proportion of benefit received by each thereof, expressed in decimals. It shall also contain a statement of the amount of such cost and expense which is to be paid by the real estate benefited, with a description of each parcel of real estate, the name of the owner or owners so far as known, the city, town or village where situated, and the proportion of benefits received by each expressed in decimals. It shall also contain a statement whether the amount so assessed upon public corporations or real estate is to be paid in one sum or annual installments as hereinbefore provided, and the amount of each annual installment in case the same is to be so paid. A copy of such statement duly verified under the seal of the board shall be filed with the clerk of each county, town, village or city, containing any real estate therein situated, to be benefited. The clerk of each such county, city, town or village shall make and deliver to the board of supervisors of such county, the common council of such city, the board of trustees of such village, and the assessors of such town, city or village, a copy of such statement. The board of supervisors of each such county shall levy and assess upon such county and upon each town specified in such statement the amount of such cost and expense which in such statement is certified to be the proportion thereof which should be borne by

such county or such town as a whole, and the common council of each city and the board of trustees of said village shall in like manner levy and assess upon such city and village respectively the amount of such cost and expense which in such statement is certified to be the proportion thereof which should be borne by each of such city and village respectively. The assessors of each town, city or village, containing individual real estate upon which a portion of such cost is assessed shall enter on a separate page of their assessment roll a statement of the total amount to be paid by such individual real estate, a description of each parcel and of the property rights defined as real estate herein and the proportion of benefit received, expressed in decimals, as contained in the statement filed. And the board of supervisors of each county wherein such property or land is situated shall levy and assess against each such parcel and each such property right defined as real estate herein so much of the amount to be raised as shall correspond with the amount of benefit received, determined by the decimal set down after the description thereof as hereinbefore provided, and shall by their warrant direct the collection thereof in the same manner and by the same procedure as general taxes are collected, except that no personal property of the owner of the parcel shall be seized or sold to pay the taxes and the particular tax assessed on account of such improvement shall be satisfied only by a sale and conveyance of the parcel benefited, and in case it is determined that the amount is to be paid in annual installments, the board of supervisors or the assessors of the city, town or village, as the case may be shall, annually assess the annual installment to be paid by such county, city, town or village or person in the manner provided by this section until the whole amount shall be paid. Upon the assessment of the benefits as provided in this section, the amounts apportioned and assessed shall be and remain charges against the several public corporations and liens upon the several properties charged therewith, until paid or otherwise removed, superior in force and effect to all other liens except unpaid general taxes. All moneys collected under and by virtue of the provisions of this section shall be paid to the county treasurer of the county benefited or the county in which the town, city, village or real estate is located, who shall pay the same on or before the first day of June in each year to the comptroller of the state, who shall deposit the same in depository banks to the credit of the several funds of such district as herein provided. In the event that it has been determined that amounts to be paid shall be paid in installments, the balance of the assessment unpaid shall bear interest at the rate of five per centum per annum; such interest shall be added to the amount of each installment as it falls due and be collected in the manner provided for the collection of the principal of the assessment. In case of default in payment of assessments or any installment thereof levied as herein provided, the same penalties shall be collected as are provided in the case of failure to pay general taxes within the time prescribed by law.

§ 46c. Operation and maintenance charges.

The board shall make an estimate of an amount sufficient to pay the expense

of the maintenance and operation of the works erected hereunder, together with the amount of a reasonable return to the state upon the value of its rights and property used and services of the state rendered, which amount shall be the estimated amount required for such purposes each year, and when fixed and determined as herein provided shall be the amount thereof for a period of ten years. Said amount shall be readjustable at the end of any ten-year term. The board shall certify its determination in this regard to the commission, and upon the approval thereof by the latter, such amount less any part thereof to be paid by the state shall be the amount to be annually collected for such purposes, shall be apportioned upon the public corporations and real estate benefited according to the benefits derived therefrom respectively, and be levied, assessed and collected in the same manner as the cost and expenses of the reservoir are herein provided to be levied, assessed and collected.

§ 461. Lands exempt and later liable to assessment.

If any lands in any district organized under this article are not liable for assessment at the time of the creation of the reservoir, but afterwards during the period when such reservoir is being paid for become liable to assessment by reason of some change in condition or ownership, the benefits to such real estate shall thereupon be apportioned and the amount thereof assessed as other real estate in said district receiving equal benefits, and such added assessments shall be levied and collected as other assessments and paid into the funds of the district for the uses thereof.

§ 462. Subsequent assessments.

In case any real estate within the district is benefited, which for any reason was not assessed, or in case any public corporation or real estate of any person shall receive benefits from the improvement in any district organized under this article to a degree not considered in the original apportionment of benefits the board shall make a reapportionment of such benefits, or in case the board find it necessary subsequent to the time when the first assessments are made to take or damage any additional property, the board shall levy and assess the expense thereof. Proceedings outlined in this article for apportionment of benefits and levy, assessment and collection of the cost and expenses of the improvement, shall in all matters be conformed with, or the board may at its discretion make any suitable settlement for such benefit, damage or property taken.

§ 463. Error in names.

No error in the names of the owners of real estate, or in the descriptions thereof, shall invalidate said apportionment or the levying of assessments or taxes based thereon if sufficient description is given to identify such real estate, and the owners thereof.

PART VII.

FINANCING.

§ 464. Bonds.

The board may from time to time issue bonds to pay the cost of improvements made by it under this article. No issue of bonds shall exceed the aggregate assessment upon public corporations and real estate benefited made for the improvement on which such issue of bonds is made. The total amount of the indebtedness incurred under this article, or of the bonds issued as provided in this section, shall not exceed ten per centum of the assessed valuation of the real estate benefited by the improvement herein authorized and assessed after the construction thereof. Such bonds shall show upon their face that the payment thereof is secured by an assessment for an improvement as provided in this article and the proceeds of the assessment for the improvement for which such bonds are issued together with all revenues derived from any leases for water or water power made as herein provided are pledged for the payment of such bonds. Such bonds shall not be construed in any event as bonds or indebtedness of the State, and the state shall not be obligated to pay the principal or interest therefor. They shall bear interest not exceeding five per centum per annum payable semi-annually. Such bonds shall be issued in amounts to be fixed as herein provided. They shall become due and payable in not exceeding fifty years from the date of issue, and shall be exempt from taxation. Before issue such bonds must be approved as to amount, term and form by the commission, and each bond shall be countersigned by the comptroller. They shall be signed by the president of the board, attested by its secretary, and have the seal of the regulating district affixed thereto. They shall be sold at not less than par and accrued interest. The comptroller is hereby charged with the duty of selling such bonds to the highest bidder after advertisement for a period of twenty consecutive days, Sunday excepted, in at least two daily newspapers printed in the city of New York, one in the city of Albany and two within the district. Advertisements shall contain a provision to the effect that the comptroller in his discretion may reject any or all bids made in pursuance of such advertisement and in the event of such rejection the comptroller is authorized to readvertise for bids in the form and manner above described as many times as in his judgment may be necessary to effect a sale. Said bonds shall be lawful investments for trustees and savings banks of the state and for any of the funds of the state which by law may be invested.

§ 465. Funds of the board.

The proceeds of the sale of bonds issued pursuant to the provision of this article, together with all other revenues of the board from whatever source derived, shall be deposited in such national or state banks or trust companies at Albany or within the regulating district as are approved by the comptroller and the board, but before any such deposit is made the comptroller shall require from such bank or trust company a bond as security for repayment of the same to be approved by him as to form, conditions and sufficiency of sure-

ties, which shall provide for the repayment to such board or the comptroller upon demand for the moneys so deposited. All moneys received by the board under the provisions of this article from the state, from the sale of bonds and from assessments levied to pay the expenses of maintenance and operation and for a reasonable return to the state, and from all other sources, except from assessments levied to pay the cost of construction, shall constitute a fund to be known as the "general fund" of the district.

All moneys received from assessments levied to pay the cost of construction, together with such part of any surplus in the "general fund" as shall be determined by the board and the commission over and above the requirements for the construction, maintenance and operation of the reservoir, including the amount raised for a reasonable return to the state, shall constitute a separate fund to be known as the "bond fund" and the same are hereby pledged to the payment of the bonds to be issued as in this article provided and the interest thereon. The comptroller is authorized and directed to pay therefrom the principal and interest of said bonds as same mature and become payable by the terms thereof. In case the proceeds of the sale of bonds exceed the total amount of the cost and expense of such improvement payable by installments or in case there are funds derived from assessments or otherwise in excess of such total, such excess and all moneys in said bond fund shall be applied by the comptroller to the payment of the principal and interest of said bonds and to the purchase of the same in the open market when possible and while awaiting such purchase such excess shall be invested or kept at interest as sinking funds of the state of like nature are invested.

All payments from the general fund of the district shall be made by requisition of the board signed by the board or by the officer or officers thereof authorized by it so to do and countersigned by the comptroller.

§ 466. Temporary financing.

To temporarily provide for the expenditures which must necessarily be made before the proceeds of the sale of bonds herein authorized become available, the board is hereby authorized to issue certificates of indebtedness, bearing interest not exceeding six per centum per annum which may be used only for the payment of liabilities incurred under this article in anticipation of the sale of the bonds therefor. The certificates shall be issued in the name of the board, and shall be entitled, _____ River Regulating District Certificates. They shall be signed by the president of the board, countersigned by the comptroller and have the seal of the board affixed, and shall be attested by its secretary, and shall be payable, principal and interest, from the general fund of the district.

PART VIII.

MISCELLANEOUS.

§ 467. Reports.

The board of any river regulating district created hereunder shall annually,

as of such date as the commission may provide, submit to it a written report, which shall contain:

1. An exhibit of the personnel of the board, and all of the employees and persons connected with the board.

2. A financial statement, showing fully and clearly the finances of the district, the amounts and dates of maturity of all bonds and certificates of indebtedness, the amounts of money received, and from what sources, and amounts of money paid and purposes for which same were paid.

3. A statement of the several petitions received by the board and the action taken thereon.

4. A descriptive statement of the work done during the previous year.

5. A statement of the condition of reservoirs and the results secured by the operation thereof in each case.

In addition to the details outlined above the board shall report to the commission such other matters as it shall deem proper or the commission shall require.

§ 468. Automatic control.

When any reservoir constructed under the provisions of this article has been filled with water, and the waters therein shall rise above the high flow line previously fixed they shall be immediately lowered to such elevation as will confine such waters within the permitted area. At the controlling works, dam, spillway or other suitable point or points in each reservoir, there shall be fixed at least two independent gauges, so placed and arranged as to permit the person or persons responsible for control of water levels in such reservoir at all times to accurately determine the weight of water therein; and, so far as practicable, one of said gauges shall be fitted with an automatic continuously recording device which shall show the height of the water in such reservoir, said apparatus to be so arranged that the water level for any given hour may be recorded thereby, and, except for absolutely necessary inspection or repairs, no reservoir shall at any time be drawn off below the minimum flow line, or to such extent as to expose isolated pools, unless due provision is made for draining said pools into lowest water level of such reservoir. Any neglect of the provisions of this section by any officer or person in charge of any reservoir shall be a misdemeanor and shall be punishable as such.

§ 469. Interference with reservoir a misdemeanor.

Any person who shall open or close or cause to be opened or closed a gate or gates in any dam constructed pursuant to the provision of this article without the consent of the board or who shall in any way interfere with the operation of, or injure a regulating reservoir, shall be guilty of a misdemeanor.

§ 470. Flow of river.

When the flow of a river at any water power-plant thereon falls below the average normal flow thereof, the then natural flow of the river at a reservoir dam thereon shall not be restricted without the consent of the owner of such power-plant.

§ 471. Maximum size of reservoir.

No regulating reservoir shall be constructed pursuant to the provisions of this article of a capacity greater than is required to maintain the average flow.

§ 472. Expense of maintenance and operation of existing reservoirs.

The expense of maintenance and operation of any existing reservoirs shall be paid as now provided by law until such reservoirs are taken over by the board pursuant to the provisions of this article, and thereafter such expense shall be paid as herein provided for the maintenance and operation of reservoirs constructed pursuant to this article.

ARTICLE 8.

Drainage.

Section 480. Powers and duties of the commission as to the drainage of land.

481. Petition for drainage improvements.

482. Determination upon petition for drainage improvements.

483. Proceedings upon approval of petition for drainage improvements.

484. Creation of drainage improvement districts.

485. Proceedings after final order approving petition for drainage improvements.

486. Entry upon lands, structures and waters in proceedings for drainage improvements.

487. Compensation of owners upon failure to agree in proceeding for drainage improvements.

488. Warrant for payment of owners upon failure to agree in proceeding for drainage improvements.

489. Bonds for drainage improvements.

490. Application of certain provisions of this chapter, relating to assessments and their collection.

491. Operation, maintenance and expenses of drainage improvements.

§ 480. Powers and duties of the commission as to the drainage of land.

In addition to the other powers and duties of the commission conferred or imposed on said commission by this chapter, it shall possess the powers and exercise the duties hereinafter prescribed in respect to the drainage of lands. Whenever, of its own motion or upon the application of any person or corporation, municipal or otherwise, the commission shall determine after a hearing and investigation that any swamp, bog, pond, meadow or other low or wet lands within the state should be drained, or the condition thereof as affected by water improved, for the purpose of the conservation of either the public health or the public safety or the public welfare, or all or any of them, by means of the construction and operation of a ditch or ditches, pipe or other channel or channels or dams, dykes, gates and sluices or the improvement of an existing channel or channels, or by other construction, it shall have jurisdiction in the premises. Whenever the commission of its own motion takes cognizance of any of said matters, its procedure in the hearing and determination of the question involved, the letting of contracts for and supervising the construction, entering upon lands, making compensation to owners providing moneys therefor, apportioning cost and assessing benefits shall conform to the provisions, so far as they can be made to apply, governing the like matters in proceedings begun by petition.

§ 481. Petition for drainage improvements.

Any county, city, town or village in which is located, or any person or persons possessing, a swamp, bog, pond, meadow or other low or wet lands, or any person or persons in the vicinity thereof, may present to the com-

mission a petition duly verified, setting forth the facts showing that the swamp, bog, pond, meadow or other low or wet lands, is a menace to the public health or safety or welfare and that it is necessary to the conservation of the public health or safety, or the conservation of the public welfare, to drain or improve the same, and praying that the same be drained and improved and that a ditch or ditches, pipe or other channel or channels, or dams, dykes, gates and sluices be constructed and operated, or that an existing channel or channels be improved, or that other works be constructed, through or upon the same or through or upon the lands of others, under the provisions of this article, so far as necessary for any or all of such purposes. Such petition may be made on behalf of any county by the board of supervisors thereof, on behalf of any town by the supervisor thereof, on behalf of any city by the mayor or board of aldermen thereof, on behalf of any village by the president or board of trustees thereof.

§ 482. Determination upon petition for drainage improvements.

Such commission on receipt of any such petition shall forthwith determine whether the draining and improving of said lands and the construction and operation of a ditch or ditches, pipe or other channel or channels, dams, dykes, gates and sluices, or the improvement of an existing channel or channels, or the construction of other works, is of sufficient importance to the public health or safety, or sufficiently conducive to public welfare, to warrant the interference of the state under the provisions of this article, and shall certify its determination thereupon. If it shall determine that the relief prayed for should be granted, such commission shall at once make or cause to be made such preliminary surveys and investigations as may be proper to determine the available means to correct the said conditions for the conservation of the public health and safety, or for the conservation of public welfare, and if relief therefrom is in the opinion of the commission practicable, to take such other and further action with reference to relieving the same as is hereinafter provided for.

§ 483. Proceedings upon approval of petition for drainage improvements.

If such commission shall determine and certify that the relief prayed for should be granted, it shall cause to be made preliminary plans and specifications of such proposed improvements, together with a survey of the lands upon which such improvements are to be located, giving the location thereof, and of all lands to be taken, or on or over which an easement is to be taken, and of all lands to be damaged thereby, with a description, by survey or otherwise, of all property and rights affected thereby, and estimates of the total cost thereof. The commission shall also cause a map to be made showing all such lands, the number of acres in each separate tract and the names of the owners and occupants thereof so far as the said commission can ascertain the same. The commission or the members thereof may enter upon such lands as the commission shall deem necessary for the purpose of doing such work, either by themselves or by their engineers, agents or servants employed by them for that purpose. The commission shall also prepare a statement or list of the counties, towns, cities, villages and individual properties which in its judgment will be benefited thereby, together with a statement

of the proportional share of said total cost which should be borne by the said counties, towns, cities and villages, respectively, and by the individual owners of property benefited collectively, expressed in decimals; and in case any part or proportion of the cost of such improvement is not properly assessable upon the counties, towns, cities, villages or individual properties, or any of them, as not in the nature of a local improvement, such part or proportion of the expense shall be deducted from the total cost before apportioning the same upon the counties, towns, cities, villages and individual properties as aforesaid, and shall be certified by the said commission to the legislature as a state charge. Said preliminary maps, plans, specifications, estimates and statements shall thereupon be filed in the office of the commission and of the county clerk of each county wherein is situated land or easements to be taken for such proposed improvements and of each county in which any of the aforesaid towns, cities, villages or individual properties benefited are situated. Upon the completion and filing of such preliminary maps, plans, specifications, estimates and statements, the commission shall give notice of the filing thereof, and of the time and place where said commission will give a hearing to persons interested therein, by advertising for two successive weeks in two newspapers published in each county where such improvement is proposed to be made, and in the state paper published at Albany, at which time and place any person interested may appear and make any objection to or suggest any modifications in said plans, maps and specifications, and said commission shall have power to adjourn said hearing from time to time as justice may require. Thereupon said commission shall determine whether such proposed improvement shall be abandoned or proceeded with, and what, if any, modifications should be made in said plans, maps, specifications, estimates and statements and shall make such modifications. If said commission shall determine that said maps should be modified so as to include the maps and statements already filed, then they shall cause modified maps, specifications, estimates and statements to be prepared and filed as hereinbefore provided, for said preliminary maps, plans, specifications, estimates and statements, and shall give notice of their completion and filing and of a hearing thereupon, in the manner hereinbefore prescribed for a hearing upon said preliminary maps, plans, specifications, estimates and statements. If said commission shall finally determine that the proposed improvement be made, it shall thereupon make a final order directing the same to be made, and shall cause to be prepared a final map and detailed plans, specifications and estimates of the total cost thereof. The commission shall cause the said final order, maps, plans, specifications and estimates, or duplicates thereof, certified by them, to be filed in the office of the county clerk of each county in which lands affected or benefited thereby are located. No such improvement shall be undertaken under this article pursuant to any such final order, or any other proceedings had thereon except as hereinbefore provided, until said final order shall have been approved by the governor. If so approved, the said final order shall become effectual and not otherwise. The commission shall have power to make such minor changes in the said final map, plans and order as the nature of the work may require, provided that such changes shall not add to exceed ten per centum to the cost of executing the plans embraced in such final order as approved

by such act of the legislature; and provided, further, that if any such minor changes shall add more than ten per centum to the cost of any such improvement, a final order for which has been approved by the governor, the commission shall publish such fact and shall give a hearing thereon as in the first instance with special reference to such increased cost of improvement, and shall await thereafter a further and final approval by the governor.

§ 484. Creation of drainage improvement districts.

At any time after such final order shall have been approved by the governor the commission shall determine what property included in the statement or list as specified in section four hundred and eighty-three of this chapter, other than counties, towns, cities and villages, is to be benefited by such improvement, and it shall thereupon cause to be made a survey and map showing the lands so determined to be benefited and the name of the owner of each separate parcel so far as practicable, the quantity in each parcel and the boundary lines thereof and where a parcel is intersected by a town or county line the quantity in such parcel on each side of the town or county line; and shall give to each parcel a corresponding number on said survey and map; and it shall also cause to be made a brief description or designation sufficient to identify the same, of all other property included in such statement or list so determined to be benefited, with the name of the owner thereof so far as practicable. When said survey and map and descriptions are completed a copy thereof with a certificate of their adoption duly signed by the commission shall be filed in the office of the clerk of each county in which any lands or property so determined to be benefited are situated or exist; and thereafter the commission shall fix a time and place in such county where the owners of said lands and property and other persons interested therein shall have an opportunity to be heard as to the lands and property to be benefited. Notice of the time and place of such hearing shall be given by the commission by notice published at least once a week for two successive weeks immediately prior to the time of such meeting in at least two newspapers published in such county. After such hearings, which may be adjourned from time to time by the commission or by any member thereof, the commission may make any change in its determination as to the lands and property to be benefited; in case of any such change the commission shall make a supplementary survey and map and descriptions, in like manner as is hereinbefore provided with reference to the original survey and map and descriptions, showing such changes, and file in the clerk's office of each county where the lands and property affected by such changes are situated or exist a copy of such supplemental survey and map and descriptions with a certificate of their adoption duly signed by the commission; and thereupon such original survey and map and descriptions, as modified by such supplemental survey and map and descriptions, if any, shall constitute the final determination of the commission as to the lands and property to be benefited by such improvement. Such final determination may be reviewed in like manner as a review is had of a determination of a board of assessors in making an assessment. Such determination as modified upon such review, if any, shall conclusively fix and establish the lands and properties benefited by said improvement, and the same together with the counties, towns, cities and villages included in said statement or list shall

constitute an improvement district; and the proportional share of the total cost of such improvement and of the maintenance thereof so apportioned to the state and the counties, towns, cities and villages as provided in section four hundred and eighty-three of this chapter shall be a charge upon and be payable by the state and said counties, towns, cities and villages respectively, and the proportional share thereof collectively charged upon the lands and properties within such improvement district as in this act provided shall be a lien upon all the lands and properties within such improvement district and shall be borne by and assessed and levied upon and collected from such lands and properties in the manner hereinafter provided.

In case any lands or properties heretofore or hereafter included within an improvement district so fixed and established by the commission shall not for any reason by properly or legally included therein or shall not for any reason be legally liable to assessment and taxation for the cost and expenses of an improvement for which such district has been or shall be so fixed and established, the said lands and properties shall nevertheless constitute and become a part of such improvement district and shall be legally liable to assessment and taxation for the cost and expenses of such improvement and the maintenance of the same and the bonds and certificates issued therefor and the interest thereon in all respects as in this chapter provided, upon recording in the office of the clerk of the county or counties in which such lands or properties are located an instrument in writing duly executed, acknowledged and delivered to the commission by the owner or owners thereof consenting that the said lands and properties shall constitute a part of such improvement district; and thereupon all the provisions of this article shall apply to the drainage or improvement of said lands with respect to which such consents shall be so executed and recorded and as to which the lands and properties referred to in such consents shall constitute the improvement district in whole or in part. Jurisdiction is hereby conferred upon the supreme court and the county court of the county in which any of such lands or properties are located to authorize the execution and delivery to the commission of such consent upon such terms as the court shall approve on behalf of an infant or incompetent owner of such lands or properties in the same manner as provided by law with respect to the sale, mortgage or lease of the real property or an infant or incompetent person.

§ 485. Proceedings after final order approving petition for drainage improvements.

When any such final order shall have been made and approved by the governor, such commission shall advertise two successive weeks in the state paper and in two newspapers published in the county wherein such work is to be performed, and if in more than one county then in each of such counties, and in such other newspaper as shall be deemed of advantage, for bids or proposals for said work to be made in writing for the construction of the necessary drains, ditches, pipes, channels, dams, dikes, gates, sluices or other improvements according to such plans and specifications. Upon the receipt of the proposals, such commission may enter into a contract or contracts with the lowest responsible bidders for the work to be done, or may reject any or all bids and again advertise for further bids. Before entering into

any such contract, a bond with sufficient sureties shall be required, conditioned that the contractor will perform all work within the time prescribed in accordance with the plans and specifications, and will indemnify the state and said commission of and from all liability for damages occasioned or suffered by reason of the negligence or willful fault of such contractor, his employees or any sub-contractor or his employees in doing such work. Partial payments for work actually done may be provided for in the contracts and paid in the manner hereinafter provided to an amount not to exceed ninety per centum of the contract price. The payments due on account of any such contracts or for any necessary expense or work in connection therewith shall be paid from the drainage fund as hereinafter provided for.

§ 486. Entry upon lands, structures and waters in proceeding for drainage improvements.

The commission may enter upon any land, structures and waters necessary for the purposes of this article and may determine that the right to temporary or perpetual use and occupancy of the property to be taken for the purpose of such improvement is a sufficient title and interest to be acquired therein. If the owner of any property to be taken, or on or over which an easement is to be taken, for such improvement shall agree with said commission upon the sum to be paid therefor, or for the right to use and occupy the same, or for any damages sustained, such sum shall be paid as hereinafter provided as part of the necessary expense incurred for the purpose of such improvement.

§ 487. Compensation of owners upon failure to agree in proceeding for drainage improvement.

If the commission cannot agree with the owners upon the compensation and damages to be paid for the property or easement to be so taken and appropriated the commission shall thereupon serve upon such persons a notice that the lands, easement or other property described therein have been appropriated by the state for the purposes of this article and shall proceed to acquire title thereto under the provisions of title one of chapter twenty-three of the code of civil procedure, known as the condemnation law.

§ 488. Warrant for payment of owners upon failure to agree in proceeding for drainage improvement.

When proceedings are taken under the condemnation law as provided in the preceding section the commission shall file in the comptroller's office a certified copy of the final order provided for in section thirty-three hundred and seventy-one of the code of civil procedure, and a certified copy of the judgment therein rendered pursuant to section thirty-three hundred and seventy-three of said code, together with a certificate of the deputy attorney-general assigned to the department that no appeal from such final order and judgment has been or will be taken by the state, or if an appeal has been taken, a certified copy of the final judgment of the appellate court affirming in whole or in part said final judgment. The comptroller shall issue to the said commission, or such officer thereof as it shall direct, his warrant for the payment of the amount due upon such final order and judgment with interest from the

date of the judgment until the thirtieth day after the entry of such final order and judgment, and the same shall be paid out of the drainage fund hereinafter provided for. Such warrant shall be payable to and shall be delivered by the commission or its officers to the owner or owners of said judgment according to the terms thereof.

§ 489. Bonds for drainage improvements.

To pay the cost of any such improvement and all the expenses and liabilities lawfully incurred by the commission under this article in connection therewith and the maintenance thereof and the interest thereon the commission is hereby authorized to issue, in the name of and under the seal of said commission, in behalf of such improvement district, bonds in a sum not exceeding the amount of the estimated total cost of said improvement and ten per centum thereof in addition thereto, unless the governor shall under the provisions of section four hundred and eighty-three of this chapter authorize the expenditure of an additional amount in excess of ten per centum of the amount of said estimated cost by a further final order as therein provided, in which case such bonds may be issued for such additional amount, but the issuance of such bonds shall be without liability on the part of the commission or any commissioner personally for the payment thereof or of the interest thereon and without liability on the part of the state beyond the proportion of any assessment to be made or certified against the state on account of said improvement. Such bonds, together with interest thereon at a rate not exceeding five per centum, payable semi-annually, shall be payable by their terms by the state, municipality and by assessment and levy of taxes upon the lands and properties in such improvement district according to the proportional share thereof determined as herein provided, and they shall be executed when authorized by the commission by the president of the commission and attested by the secretary thereof. Such bonds shall be issued in serial form in amounts to be fixed by the commission; they shall by their terms become due and payable as determined by the commission in not exceeding fifty years from the date of issue, and they shall be exempt from all taxation by the state or by any county, town, city, village or other subdivision of the state, and shall be a legal investment for savings banks, trust companies, executors and trustees. Such bonds shall be sold by the comptroller at not less than par and accrued interest, and the proceeds thereof deposited in a national or state bank or trust company either at Albany or in one of the counties in which such improvement is made, to be approved by the comptroller and the president of the commission. But before any such deposit is made, the comptroller shall require from the depository a bond as security for the repayment of the same, to be approved by him as to form, condition and sufficiency of sureties, which shall provide for the repayment to the commission upon demand of the moneys so deposited. Moneys received under the provisions of this article shall constitute a fund to be known as the drainage fund, and the portion thereof applicable to each improvement shall be separately kept by the comptroller, and the same are hereby pledged to the payment of the cost and expenses of such improvement and the maintenance thereof, and the bonds to be issued as in this article provided, so far as the same are applicable to such improvement, and the comptroller is authorized and directed to pay therefrom the principal and interest of said

bonds as the same mature and become payable by the terms thereof, and the costs and expenses of such improvement and the maintenance thereof upon the order of the commission or the authorized officer thereof. In case the proceeds of the sale of bonds exceed the total amount of the cost and expenses of such improvement, such excess shall be applied by the comptroller to the payment of the principal and interest of such bonds and the maintenance of such improvement.

§ 490. Application of certain provisions of this chapter, relating to assessments and their collection.

The provisions of sections four hundred and sixty and four hundred and sixty-one and all of the powers, duties and proceedings therein provided for, shall apply to improvements made under this article, with the same force and effect as if such improvements were river improvements, except that the references in section four hundred and sixty-one to the river improvement fund shall, in proceedings which relate to improvements under this article, be deemed to refer to the drainage fund, and the provisions of section four hundred and sixty-three, and the powers, duties and proceedings therein provided for, shall also apply to assessments under this article.

§ 491. Operation, maintenance and expenses of drainage improvements.

The care, control, operation and maintenance of improvements provided for in this article shall devolve upon the commission. This commission shall have power to charge to each such improvement undertaken by it such portion of the expenses so incurred as it shall determine ratably and equitably is chargeable thereto and to include the same in the apportionment or assessment of the cost and expenses of such improvement. Any person who shall open or close or cause to be opened or closed a gate or gates, or otherwise interfere with any dam, dike, ditch, pipe, sluice or channel constructed or improved under this article, without the consent of the commission or an officer thereof, shall be guilty of a misdemeanor.

ARTICLE 9.

Water Supply.

Section 520. General powers of commission in relation to water supply.

521. Municipal corporations must submit maps and profiles of new or additional sources of water supply.

522. Petition for approval of plans for water supply and proceedings thereupon.

523. Approval of work.

524. Water supply to be used in other states.

525. Sewage disposal as affecting potable waters.

§ 520. General powers of commission in relation to water supply.

The commission shall have the powers and perform the duties in relation to the supply of potable waters for the various municipalities, civil divisions and inhabitants of the state, set forth in this article, and as may be further provided by law.

§ 521. Municipal corporations must submit maps and profiles of new or additional sources of water supply.

No municipal corporation or other civil division of the state, and no board, commission or other body of or for any such municipal corporation or other civil division of the state shall, nor shall any person or waterworks corporation engaged in supplying or proposing to supply the inhabitants of any municipal corporation or other civil division of the state with water, after this chapter takes effect, have any power to acquire, or to take a water supply or an additional water supply, or to take or condemn lands for any new or additional sources of water supply, until such person, corporation or civil division has first submitted the maps, plans, and profiles therefor to the commission of conservation, as hereinafter provided, and until said commission shall have approved the same or approved the same with such modifications as it may determine to be necessary as hereafter provided. Approval shall not be necessary of any plans heretofore approved by the state water supply commission, or of any plans or works for a new or additional water supply or filtration plant authorized in pursuance thereof or in connection therewith, or of any plans or work for the extension of supply or distributing mains or pipes of a municipal water supply plant into and for the purpose of supplying water in any territory within the limits of the municipality owning such plant, including territory which has not been heretofore supplied with water by such plant.

§ 522. Petition for approval of plans for water supply and proceedings thereupon.

Any municipal corporation or other civil division of the state, or any person or waterworks corporation, may make application by petition in writing to the commission for the approval of its maps, plans and profiles of such new

or additional water supply or for such new or additional source or sources of water supply. Such application shall be accompanied by an exhibit of maps of the lands to be acquired and profiles thereof showing the sites and areas of the proposed reservoirs, a plan of the other works proposed to be constructed, the profiles of the aqueduct lines and the flow lines of the water when impounded, maps, plans and surveys and abstracts of official reports relating to the same, showing the need for a particular source or sources of supply and the reasons therefor, the plan proposed for protecting the new supply and watershed from contamination, or the proposed plan for filtering such new supply, and such application shall be accompanied by a plan or scheme to determine and provide for the payment of the proper compensation for any and all legal damages to persons or property, whether direct or indirect, which will result from the acquiring of said lands and the execution of said plans. Such petition shall also be accompanied by such proof as to the character and purity of the water supply proposed to be acquired as the commission shall require. If such petition is made by a person or waterworks corporation, it shall be accompanied by an undertaking in such amount and with such sureties as the commission shall determine, that such person or waterworks corporation will pay the expenses of the hearing and determination as hereinafter provided. Said commission shall thereupon cause public notice to be given that on a day therein named it will hold a public hearing at the office of the commission in the city of Albany, or at such other place as it may particularly specify in said notice, for the purpose of hearing all persons, municipal corporations or other civil divisions of the state that may be affected thereby. Such notice shall be published in such newspapers and for such length of time, not exceeding four weeks, as the commission shall determine. At any time prior to the day specified in such notice any person or municipal corporation or the proper authorities of any civil division of the state may file in the office of the commission at Albany objections to the project proposed by such application. Every objection so filed shall particularly specify the ground thereof. Said commission shall, upon the day specified in said notice, or upon such subsequent day or days to which it may adjourn the hearing, proceed to examine the said maps and profiles and to hear the proofs and arguments submitted in support of and in opposition to the proposed project, but no person, municipal corporation or local authorities shall be heard in opposition thereto except on objections filed as authorized by this section. The commission shall determine whether the plans proposed are justified by public necessity, whether they provide for the proper and safe construction of all work connected therewith, whether they provide for the proper protection of the supply and the watershed from contamination or provide for the proper filtration of such additional supply, and whether such plans are just and equitable to the other municipalities and civil divisions of the state affected thereby and to the inhabitants thereof, particular consideration being given to their present and future necessities for sources of water supply, and whether said plans make fair and equitable provisions for the determination and payment of any and all legal damages to persons and property, both direct and indirect, which will result from the execution of said plans or the acquiring of said lands. The commission shall within ninety days after the final hearing and with all convenient speed

either approve such appli— *in the application, maps and plans submitted as it may determine *cation, maps and plans as presented or with such modifications to be necessary to protect the water supply and the interests of the applicant or of the inhabitants of the territory supplied by it with water, or the water supply and interests of any other municipal corporation, or other civil division of the state, or the inhabitants thereof, or the water supply and interests of any other person or waterworks corporation, engaged in supplying water to any other municipal corporation or other civil division of the state or the inhabitants thereof; or to bring into co-operation all municipal corporations, or other civil divisions of the state, which may be affected thereby; or to make just and equitable the submitted plan or scheme to determine and provide for the payment of the proper compensation for any and all legal damages to persons or property, whether direct or indirect, which will result from the acquiring of said lands and the execution of said plans, or to make safe all dams or reservoirs to be constructed by said plans; or it may reject the application entirely or permit another to be filed in lieu thereof, but it shall, however, make a reasonable effort to meet the needs of the applicant, with due regard to the actual or prospective needs and interests of all other municipal corporations and civil divisions of the state affected thereby and the inhabitants thereof. Whenever the commission shall make a decision on any application submitted to it, it shall state the same in writing and, if it approves, shall cause the same to be signed and the official seal of the commission affixed thereto and file the same, together with all plans, maps, surveys and other papers or records relating thereto in its office. The decision of the commission and its action on any application may be reviewed by certiorari proceedings. The expense of any such hearing and determination by the commission shall be certified by said commission to the person, waterworks corporation, municipal corporation or other civil division of the state making such application and shall be paid by said applicant within thirty days thereafter upon the certificate of the commission to the persons entitled thereto.

§ 523. Approval of work.

No new water supply system, built in accordance with plans hereafter approved by the commission, shall be operated until the work has been approved by it.

§ 524. Water supply to be used in other states.

No waters of this state shall be diverted without the state. No person or corporation shall transport or carry through pipes, conduits, ditches or canals the waters of any fresh water lake, pond, brook, river, stream or creek in this state or any well, subsurface or percolating waters of this state into any other state for use therein except where the consent in writing of the conservation commission has been obtained. The conservation commission shall enforce the provisions of this section, and the supreme court may upon the application of the commission prevent such diversion or transportation by injunction.

Amended by L. 1913, ch. 469. In effect May 9, 1913.

*So in the original.

§ 525. Sewage disposal as affecting potable waters.

The commission shall report the present disposition of sewage of each municipal corporation and other civil division of the state, and, if necessary, of adjoining states, with special reference to said disposition affecting the various municipal corporations and other civil divisions of the state in relation to the water supply of this state. Said commission shall also report the advisability of, the time required for, and the expenses incident to the construction of a state system of water supply and for a state system for the disposition of sewage, if necessary, for all or any of the municipal corporations and other civil divisions of this state, and make such recommendations connected with the subjects of said investigations herein provided for as said commission shall determine. In said investigation concerning either the water supply or disposition of sewage, said commission shall, so far as possible, make use of all reports and surveys in regard thereto which have heretofore been made. Wherever, by any provision of law, the consent or approval of any state board, officer or commission is required for the construction of any sewage system or sewage disposal works, the further approval thereof by the conservation commission shall be required.

Amended by L. 1913, ch. 469. In effect May 9, 1913.

(Article added by L. 1913, ch. 233. In effect Apr. 8, 1913.)

ARTICLE 9-A.*

Union Water Districts.

Section 530. Union water districts; formation.

- 531. Petition to conservation commission; hearing.
- 532. Submission of proposition.
- 533. Acquiring of lands.
- 534. Letting of contracts; construction work.
- 535. Maintenance and operation of works.
- 536. Cost and expenses.
- 537. When other municipalities may participate; regulations.
- 538. Sale of water by commission.
- 539. Definitions.

§ 530. Union water districts; formation.

Any number of municipalities, including water districts, within contiguous counties may join in the formation of a union water district, and three or more such municipalities may meet and confer for that purpose. The subject for consideration at any such meeting shall be the proposition that the municipalities thus conferring shall join in the formation of a union water district. Municipalities not represented at the first meeting may participate in adjourned meetings and each municipality represented at any such meeting shall have one vote, which shall be cast by the chief executive officer thereof. The officers so attending shall choose a chairman, who shall preside over the meeting and a clerk whose duty it shall be to keep minutes of the proceedings. Whenever ten or more municipalities so attending shall vote in the affirmative on said proposition, those so voting shall thereupon become a union water district, except that if less than ten municipalities shall vote in the affirmative, they shall become a union water district provided they shall have a combined population of at least twenty-five thousand inhabitants, according to the last preceding federal census or state enumeration, and the census or enumeration last taken shall control. Whenever such meeting shall result in the formation of a union water district, a report in writing of such meeting shall be made and subscribed by the chairman and the clerk of the meeting, and such report shall set forth the attendance at such meeting, the vote taken, and the name adopted for such district, which shall consist of one word to precede the words "union water district" and shall not be a name previously adopted by any other such district, and the same shall, within five days after such meeting, be filed in the office of the clerk of each county wherein any municipality becoming a member of such union water district shall be situated.

There shall be a board, to be known as the trustees of such union water district, consisting of the chief executive officer of each municipality becoming a member thereof. A majority of all the members of such board of trustees shall constitute a quorum for the transaction of business, and they shall choose one of their number chairman, whose duty it shall be to preside at meetings of the board, and they shall choose a clerk, whose duty shall be

* Article added by L. 1913, ch. 233. In effect Apr. 8, 1913.

to keep the records of its proceedings. Within ten days after the filing of such a report in the offices of the county clerks, the said trustees shall meet and each shall take and file with the said clerk the constitutional oath of office.

The said board of trustees shall have power and it shall be their duty to adopt by-laws and rules to govern the conduct of its business. Meetings, in addition to any meetings otherwise provided for in this article, may be called by at least three trustees who shall file said call with the clerk, and it shall be the duty of the clerk to give written notice of such meeting by mail to each member at least two days prior to the time fixed therefor, stating in such notice the time and place of the meeting. All meetings shall be held at a convenient place within one of said municipalities.

§ 531. Petition to conservation commission; hearing.

The board of trustees of such union water district may apply in writing to the conservation commission to investigate the proposition and to cause surveys, maps, plans and estimates to be made and such further or other information supplied as may be deemed advisable by the conservation commission to be made. Such petition shall set forth the formation of such union water district and state the population thereof determined in the manner hereinbefore specified, and shall contain an estimate of the probable population of each municipality at the end of ten years next succeeding and an estimate of the consumption of water per capita per diem which such municipality will require, and a statement in detail of all water supplies and works then owned by any such municipality and of the water works of any water works company or of any person supplying water to them or any of them and such other matters, if any, as may be prescribed by the rules and regulations of the commission. The petition shall also state at what location or point in or for each municipality it is desired to have water supplied by works to be constructed.

Upon the receipt of such petition, the conservation commission may in its discretion, and if it has funds available for such purpose, cause preliminary investigations, surveys, maps and plans to be prepared under direction of the chief engineer of said commission. If the commission thereupon finds that the physical conditions are unfavorable for the acquisition of a water supply and the construction of works for the supply of such union water district, or that the same would be excessively expensive, it shall so report, and in that case may in its discretion decline to take further action on such petition. If the commission shall deem it advisable so to do, it may make final investigations of the proposition and cause final surveys, plans, estimates of cost and specifications to be made and take any other steps incidental thereto. Upon completion thereof the commission shall furnish the board of trustees of said union water district with copies of its report therein. Thereupon the commission shall set a time and place for a public hearing upon the petition and on such report and shall hear allegations and proofs for or against the same and after such hearing the commission shall determine whether an adequate supply of pure and wholesome water is obtainable at reasonable cost for serving all the municipalities within such union water district. In making such determination the commission shall consider the present and future necessities of municipalities and the inhabi-

tants thereof not parties to the petition but whose sources of water supply might be affected or impaired by the project under consideration. The determination so arrived at shall be reported by the commission to each such municipality.

The purpose of such project shall be to supply water to central distributing points for each municipality. All reservoirs, stand pipes, mains, pipes, valves, hydrants and appurtenances for the storage and distribution of water from such central points to consumers shall be such as may have been heretofore or may be hereafter constructed by or for each municipality as otherwise provided by law. The ownership, construction and maintenance of such municipal works, and the distribution and sale of water after the same leaves such central points shall be and remain under the duly constituted officers of each municipality as is now provided by law. All water shall be metered at such central points under the direction and control of the commission. The report of the commission if in favor of the project shall determine what proportion of the whole original cost of establishing conservation water works for such union water district for delivery of water at such central points shall be borne by each municipality.

The pendency of a proceeding on the part of any municipality or water district for procuring an independent supply of water under any statute, shall not prevent such municipality or water district from taking part in the formation of a union water district as herein provided.

§ 53a. Submission of proposition.

Upon receiving from the commission the report, maps, plans, estimates of cost, and other information aforesaid, the board of trustees shall consider and either adopt or reject the same. If the board adopts the same, such adoption shall be certified by the board to each municipality included within such union water district, and thereupon there shall be submitted to the electors of each such municipality a proposition for issuing its bonds for its proportion of the estimated cost aforesaid. Such proposition shall be submitted within thirty days after receiving such certification from the board of trustees.

In case of a city, except as herein otherwise provided, such elections shall be conducted according to the statutes applicable to the submission of a proposition for the establishment of an independent water supply for such city or for authorization of a bonded debt. In case of a village, except as herein otherwise provided, such election shall be conducted in the manner provided by article nine of the village law. In case of a water district, except as herein otherwise provided, such election shall be conducted as provided in article thirteen of the town law, but only electors resident within the water district shall participate in the election. Such proposition shall be deemed adopted by a municipality if a majority of all the votes cast at said election shall be cast in favor of the proposition. Except as otherwise provided herein, a municipality, when the issuance of such bonds has been authorized as herein provided, shall issue and sell the same in the manner now provided by law for the issuance and sale of bonds, except that the limitations now provided by law upon indebtedness of municipalities shall not apply to a debt incurred under the provisions of this section except as otherwise provided by the constitution of the state.

It shall be the duty of the proper authorities of such municipality to levy annually, in the manner now provided by law in case of bonds authorized to be issued by such a municipality, such sum or sums as shall be necessary to meet the principal and interest upon the bonds issued as provided herein, or for the establishment of a sinking fund on account of the bonds so issued.

An affirmative vote in any municipality at an election held as aforesaid shall be binding for a period of two years. A negative vote in any municipality shall not be final as to said municipality, but the same proposition may be resubmitted not more than three times to the electors thereof and in such case not more than four months shall elapse between such resubmission unless an affirmative vote shall result. If the vote of any such municipality shall be in the negative four times, then such union water district shall cease to exist, except that in such case the municipalities voting in the affirmative may through the said board of trustees apply to the commission to certify the proportion of cost which each such municipality should bear of such project, as the same should be modified by reason of the elimination of the municipalities voting in the negative, and on a report by the commission of such estimate, a proposition based thereon shall be submitted to each such municipality in the manner herein provided for the submission of an original proposition and in that case the provision aforesaid as to the issuance and sale of bonds shall apply as so modified. If in such case any municipality shall vote in the negative, no further proceeding shall be had upon such petition and said union water district shall cease to exist.

Upon the issuance and sale by a municipality of bonds as herein provided, the proceeds shall be deposited in a national or state bank or in a trust company by each municipality separately, but to the credit of the conservation commission, and such moneys shall be used and paid out by the commission for the purposes herein provided. Such municipality shall select the depositories which shall agree to pay the highest rate of interest upon such deposit and the deposit shall be secured by bonds to the municipality approved by the commission. The interest accumulating upon such deposit shall be credited to the municipality making the same and shall be used by it in paying interest on its bonds issued as above provided. In withdrawing such deposits, the commission shall withdraw not more than one-half of the amount so deposited by any one municipality until one-half of the separate deposits of other municipalities shall have been withdrawn.

Upon concurrence of a sufficient number of municipalities by affirmative votes on submission of the proposition aforesaid and the deposit of an aggregate amount of money equal to the estimate of the cost reported as herein provided, the commission shall proceed to construct water works, as described in its report or as the same may after such hearing be modified, subject only to such minor changes in the design as circumstances may from time to time in the opinion of the commission require. Such works shall be known as conservation water works.

§ 533. Acquiring of lands.

The commission or its agents, engineers, and such other persons as may be necessary for the execution of the powers and duties herein provided,

may enter upon any land or water for the purpose of making surveys, examinations and investigations for preparing the maps, plans, specifications and reports herein provided for, and the persons damaged thereby shall be entitled to file claims therefor with the board of claims and recover against the state such damages.

The commission shall have the power to purchase and take possession of in the name of the people of the state of New York and to be held by said people for the purposes authorized by this article or to acquire in the same name by condemnation as hereinafter provided for such purposes, all lands above or under water and structures and to acquire and take in the same name and manner and divert and use waters, public or private, deemed by the commission to be necessary for said purposes. If the commission shall be unable to agree with the private owner of lands and properties for the purchase thereof or with the private owner of frontage along waters for acquiring of the right to divert such waters or to agree with the private owner of lands for acquiring of easements in, over or against such lands, the same may be acquired by the commission by condemnation as follows:

An accurate survey of the lands so acquired or of lands in, over or against which any easement is so required shall be made and a map thereof shall be prepared accompanied with an accurate description of the said lands, rights and easements so required, which description shall state the volume of water to be taken or diverted where less than the whole flow of any stream or water is to be taken or diverted and of the period during which such lands are to be held or such waters used or diverted and a sufficient description of any other easements in, over or against such lands, so as to describe with common certainty the lands, rights or easements to be taken, and the same shall be certified by the commission and filed in its office and a duplicate thereof made and recorded in the office of the clerk of the county within which any lands taken or affected are situated. Thereupon the commission may apply to the supreme court within the judicial district containing such lands for the appointment of commissioners of appraisal to determine the amount of compensation to be paid by the conservation commission for the property to be so appropriated and, except as otherwise provided in this article, the provisions of title one of chapter twenty-three of the code of civil procedure known as the condemnation law shall apply to and govern the procedure on such application and regulate the fixing and payment of the compensation to be made. The commission may in its discretion unite in one petition to said court, applications to acquire several such properties or all the separate properties sought to be taken for any one project carried on under this article.

Such petition shall be accompanied by a duplicate of the map and descriptions of the properties to be taken and required to be filed as aforesaid.

On the appointment of commissioners of appraisal and the taking and filing of official oaths by them as required by the condemnation law in case of such application, the conservation commission may enter upon and take possession of and use, for the purposes herein authorized, the lands and properties described in such petition and the said maps and statements accompanying the same. Said petition and the said duplicate map and statements filed therewith shall be conclusive evidence of the boundaries of the lands to be appropriated and of the extent and nature of any rights and

easements described therein to be taken. This provision for compensation shall not be construed to require payment of compensation except to the extent of the legal rights of such private owners and according to the legal measure of damages and there shall be no presumption that the lands and property rights so described are privately owned.

In case any lands or rights as hereinbefore described are owned by the public not including the lands and waters of the canals and lands within the forest preserve, and the acquisition thereof for the purposes herein described shall be necessary, the same may be entered upon and used by the conservation commission and if the same were at the time of such taking the separate property or under the jurisdiction of any county or other municipality or other civil division of the state or contain improvements made by them, a just and fair sum on account of such taking may be agreed upon by the conservation commission and the governing board or body of such county, municipality or civil division and the amount thereof shall be paid over by the conservation commission to the proper officers of such county, municipality or civil division on the execution and delivery to the commission of an appropriate conveyance describing the lands and rights so taken and in case such amount cannot be agreed upon the same shall be fixed and determined by three commissioners to be appointed by the supreme court within the judicial district where said lands affected are located on application either by the commission or the proper authorities of such county, municipality or civil division on notice to the other and when the determination of such commissioners shall be confirmed by said court the sum so affixed and determined upon shall be paid by the conservation commission.

Any diversion right now exercised for private purposes and under which public waters are diverted under any gratuitous franchise, express or implied, or franchise terminable at will as against the user, shall be and be deemed to be revoked when and to the extent that the waters subject to diversion are in the opinion of the commission, to be so certified by order to be made by it, needed for public water supply as herein provided.

The commission shall have the right subject, in case of state improved highways, to the approval of the state commission of highways, to relocate highways which are within lands to be flowed by works constructed hereunder and shall have the right to lay pipes or conduits for conveyance of water along or across any highway or other public place and across any railroad, canal, transmission or other way devoted to public use, but the same shall be restored to its former condition of usefulness. The commission shall have power to apply in behalf of the state under any law of congress for permission to divert waters from any Indian lands when required for furnishing public water supply for a union water district.

Whenever it shall be necessary to appropriate lands occupied by graves, burial places, cemeteries or other places of interment of human remains, the same may be acquired in the same manner as other lands as herein provided and where the same is to be acquired by condemnation, service of notice of the time and place of presentation of the petition upon a person, corporation or other governing board, body or officer having possession, ownership or exercising control thereover, or service thereof in such manner or upon such other persons as shall be specially directed by the court, shall be sufficient.

But such lands shall not be entered upon by the conservation commission in such case until after judgment adjudging that the condemnation thereof is necessary for the purposes herein specified shall be rendered, nor until the special provisions of such judgment as to the removal and reinterment of the human remains in said lands shall be complied with by the commission and the judgment shall require that such remains be removed to some other appropriate lands or places to be specified in said judgment including the removal and replacing of all marks distinguishing the persons so interred and the removal, transportation and reinterment of such remains shall be made in accordance with the provisions of the public health law and the local rules or ordinances of any city, village or town wherein the lands containing such remains or lands in which they shall be reinterred are located. Upon completing the work of reinterment the commission shall convey an appropriate right and title in the lands acquired by it for such reinterment, to the person, corporation or governing board or officer, if any, formerly owning, possessing or controlling the property from which said remains were removed. If there be no such person, corporation or other governing board or officer, the commission shall, as part of the expense of the project prosecuted by it, maintain the property acquired for such reinterment as a cemetery. The lands required for such reinterment shall be deemed to be required for the purposes of the project authorized by this article.

Before any lands are acquired by purchase or any condemnation proceedings instituted or any expenditure made for excavation or construction hereunder, the commission shall cause a general map to be made and filed in its office and furnish a certified copy thereof to each municipality a member of a union water district, which map shall show the lands necessary to be acquired and waters necessary to be diverted, and shall show the lands needed for rights of way and for the location of reservoirs and central points of delivery of water, and the commission shall cause general plans of all construction and excavation work to be made and filed, and copies thereof furnished in the same manner.

§ 534. Letting of contracts; construction work.

All excavation and construction work shall be performed under contracts based upon maps, plans and specifications and estimates of quantities made by the commission as hereinbefore provided, and any contract for performance of the whole work to be done or material, based upon any one petition or any contract for any part of such work or materials shall be let to the lowest responsible bidder after public notice of such letting, to be given by advertising the same once in each week for four weeks immediately preceding the day fixed for the receiving of bids and one such notice shall be published in a newspaper printed within each of the counties wherein any part of such work is to be performed. The requirements of the state finance law and the labor law as to the form and contents of public contracts in respect to the requirements of bonds from contractors to secure faithful performance and completion of the work shall apply to all contracts let under the provisions of this article.

If in the judgment of the chief engineer any work is not being performed according to the contract or for the best interest of the public, he shall so

certify to the commission and the commission shall thereupon have power to suspend or stop the work under such contract while it is in progress, and to provide for completion of the same in such manner as will accord with the contract specifications and for the best interests of the public, or the contract may be cancelled and readvertised and relet in the manner herein prescribed and any excess in the cost of completing the work beyond the price charged for which the same was originally awarded, shall be charged to and paid by the contractor failing to perform the work.

If at any time in the conduct of the work under any contract it shall become apparent to the chief engineer that any item in the contract will exceed in quantity the engineer's estimate by more than fifteen per centum, he shall so certify to the commission and the commission shall thereupon determine whether the work in excess thereof shall be completed by the contractor under the terms and at the prices specified in the contract or whether it shall be done by the commission or whether a special contract shall be made for such excess in the manner above prescribed. Every contract made hereunder shall reserve to the commission the right to suspend or cancel the contract as above provided and to complete the work or readvertise or relet the same as the commission may determine and reserve to the commission the right to enter and complete any item of the contract which shall exceed in quantity the engineer's estimate by more than fifteen per centum or to make a special contract for such excess as the commission may determine.

All excavation and construction work shall be performed under the supervision of the conservation commission through its chief engineer and all payments upon contracts shall be made upon estimates to be made by said chief engineer. All works to be constructed hereunder shall be designed for delivery of water by gravity and all such water shall, before it is delivered to any municipality, be properly filtered under direction of the commission.

§ 535. Maintenance and operation of works.

Upon completion of any conservation water works as provided hereunder, the commission shall maintain and shall operate the same and shall guard the waters from contamination. The commission shall cause records to be kept of the quantity of water delivered to the central points and the same shall be measured by meter to each municipality and the commission shall render to each municipality in a union water district annually as of the first day of January a statement of the quantity so delivered for the calendar year last preceding.

If the quantity of water so delivered exceeds the aggregate quantity due to a municipality based on the rate of one hundred and twenty-five gallons per diem to each actual inhabitant thereof as shown in the petition herein provided, then a charge shall be made to such municipality for such excess and at such rate per million gallons as the commission shall determine. Payment for such excess by such municipality shall be made on or before July first of each calendar year to the commission. The commission shall annually apportion the whole sum so received among the municipalities in proportion to the amount which each has contributed to the cost of the conservation water works and shall promptly pay to each municipality its share thereof. Upon the completion and placing in operation of such water works,

the commission shall employ such superintendent and assistants as it deems necessary for the proper and economical operation and administration thereof, and shall purchase and supply such materials and labor as are necessary in the maintenance, repair and operation. The commission shall cause an accurate account of all such expenses to be made and kept and shall report the same annually in the month of January for the calendar year last past.

The commission may from time to time, upon temporary loan certificates to be issued by it, borrow such sums as may be necessary to carry on such operation and maintenance. Such certificates shall bear interest at the rate of six per centum and shall be sold at not less than par and each municipality within a union water district shall be liable for its share of such expense in the proportion which it contributed to the original cost of the works. The annual amounts for such expenses, as apportioned by the commission, shall be paid by each municipality on the first day of March following the calendar year in which the said expenses were incurred. Interest to March first shall be included in the sum annually reported by the commission for such expense. A member of the board of trustees of a union water district shall be reimbursed by his municipality for his actual and necessary expenses and disbursements paid or incurred by him in the performance of his duties, upon vouchers audited and approved in the manner provided by law for other claims against such municipality.

§ 536. Cost and expenses.

If the cost of a conservation water works exceeds the original estimate of the commission, the excess shall be borne among the municipalities according to the proportion which each contributed to the estimated cost and the same shall be raised by each municipality in a manner to be determined by it and the said sum paid over to the conservation commission. If the total cost of such construction shall be less than the cost as estimated and as raised by the municipalities, such excess shall be refunded to said municipalities by the conservation commission ratably as the same was contributed, and when so refunded, the same shall be used by said municipalities to retire the bonds issued by them or paid into the sinking fund for the retirement of said bonds.

All cost and expenses on the part of the state of New York, including the expenses of engineering or other professional services incurred on account of the construction of conservation water works or the acquiring of lands and diversion rights shall be deemed a part of the cost thereof to be borne by the municipalities in a union water district, and shall be estimated as part of the expense and shall be paid from the funds raised by said municipalities for said purpose.

§ 537. When other municipalities may participate; regulations.

Any municipality originally eligible to membership in a union water district and not a member thereof, may on a majority vote of the governing board or body of such municipality, or in case of a water district, the town board may apply by petition to the conservation commission and to the trustees of such union water district to become a member of such union water district. If the commission and the board of trustees approve the petition the commission shall estimate and determine the cost of additional construction

to provide for service of water to such municipality from the conservation water works, and shall likewise estimate and determine what share of the original cost thereof should be paid by such petitioning municipality and shall report the same to it and to the board of trustees. Such municipality shall thereupon in the manner hereinbefore provided in the original formation of a union water district determine whether it will issue bonds to cover the aggregate amount so reported and if the same is determined in the affirmative, bonds shall be issued and sold by such municipality and the proceeds raised and deposited and taxes imposed for the retirement of such bonds issued, in the same manner as in case of the original organization of a union water district. The proceeds of such bonds issued shall be deposited to the credit of the commission for the purposes of this act in the manner hereinbefore provided. Upon the deposit of such funds, such municipality shall thereupon become a member of such union water district and shall be supplied with water from such conservation water works.

The funds so deposited by said municipality shall be disposed of as follows: The estimated cost of the additional construction due to each municipality becoming a member of a union water district shall be deducted; the remainder shall be apportioned to each municipality in the district including the municipality thus last added thereto, in the proportion in which each has contributed to the cost of the conservation water works, and the commission shall as soon as possible pay to each municipality its share thereof. All sums so received by each municipality shall be applied by it to the payment of the principal of any outstanding bonds which it may have issued for the construction of conservation water works.

§ 538. Sale of water by commission.

The commission, with the unanimous consent of the board of trustees of a union water district, may sell water by meter to water works companies or others, exclusive of municipal corporations, provided such water is for use or resale in territory outside that of any municipality in such district and provided that no additional construction connected with the conservation water works shall be necessitated by reason of such sale, except for the installation of meters to measure water so sold and for meter houses and for not exceeding five hundred feet of pipe lines for connections to each of such meters.

Contracts for such sale shall be limited to periods of five years from the time of making the same, and upon the expiration thereof, new contracts so limited may be made in like manner.

The receipts from such sales shall be applied, first, to the installation of meters and appurtenances above named, and the remainder shall be distributed among the municipalities which are members of the union water district, and in the proportion in which each has contributed to the cost of the conservation water works.

§ 539. Definitions.

The term "chief executive officer of a municipality" as used in this article shall in the case of a city be deemed to refer to the mayor thereof; in case of a village, the village president; in case of a town, the supervisor; in case of a water district, the supervisor of the town within which such district or the major part thereof is located.

DRAINAGE LAW.

(Chapter 15 of the Consolidated Laws.)

§ 2. Petition for drainage; who may make, and to what court.

Any person owing or possessing any swamp, bog, meadow, or other low or wet lands within this state, who shall be desirous to drain the same in the interest of public health or for their improvement for agricultural purposes and who shall deem it necessary in order thereto that a ditch or ditches or other channels for the free passage of water should be opened through lands belonging to another person, or any person whosoever who shall deem it necessary for the public health that any such swamp, bog or meadow or low or wet land should be drained, or that the outlet of any pond should be deepened or cleaned out so as to permit the free passage of water of such pond to such outlet, may present a petition duly verified, to the county court of the county in which such lands lie, or in case the same are situated in more than one county, to the supreme court, setting forth the facts in the names of the owners of all lands to be affected by the proceedings, so far as the same can with reasonable diligence be ascertained, and praying for the appointment of three commissioners for the purposes and with the powers hereafter set forth. The application provided for by this section may be made by the supervisor of any town on behalf of the town, or by the president of the board of trustees of any incorporated village on behalf of said village.

Amended by L. 1910, Ch. 624. In effect June 24, 1910.

§ 30. Commissioners to make statement of cost of drainage and assess same according to benefits received.

The said commissioners shall, as soon as the said costs, expenses, land damages and compensation, hereinbefore provided for, can be determined and

ascertained, make a complete and detailed statement thereof, including all the claims of said commissioners, which statement shall be duly verified by said commissioners or by a majority of them. They shall also, in case they have decided that the public health requires that such lands shall be drained, determine whether any, and if so, how much of the said sum shall be assessed to and paid by the incorporated village, town or county in which the said lands are situated, and whether the same shall be paid in one assessment or in annual instalments, not exceeding thirty in all; the remainder, or in case they shall determine that no portion of said sum shall be paid by said village, town or county, then all of said sum shall be apportioned among the several owners or occupants of such of the lands included in the said map or adjacent thereto, as they shall deem to be directly benefited by said drainage, in proportion to the amount of benefit which each receives therefrom, and they shall in like manner determine, whether said sum so apportioned shall be paid in one assessment, or in annual instalments, as above provided, in reference to assessments to be paid by a village, town or county; provided, however, that the board of supervisors of any such county, the town board of any such town, the board of trustees of any such village, or any such owner or occupant of lands upon which, or to whom said sum or any part thereof is apportioned, may elect to pay the whole of their said apportionment, or the portion thereof at any time remaining unpaid in one assessment, instead of in instalments as above provided. The several amounts so adjudged shall constitute liens upon the respective tracts until paid or otherwise removed with interest from the service of notice of such decision of said commissioners as hereinafter provided, that no portion of the costs, expenses, land damages and compensation provided for in and by this chapter shall be assessed to or paid by any incorporated village, town or county in which the lands so to be drained are situated, unless a majority of the board of trustees in case of a village; a majority of the town board in case of a town; and a majority of the board of supervisors in case of a county, shall have joined in the petition required by the second section of this chapter, except, however, that the said commissioners shall, in case they have decided that the public health requires the drainage of the land, upon the consent of a majority of the town board of such town, manifested by the adoption of a resolution to that effect, in such case determine whether any, and if so, how much of said sum so ascertained for costs, expenses, land damages and compensation shall be assessed to and paid by such town, and thereupon the amount so determined to be paid by such town shall be assessed upon and paid by such town in one assessment or in annual instalments as such commissioners shall determine.

Amended by L. 1917, Ch. 556, in effect May 18, 1917.

§ 31. Statement and assessment to be filed.

The said commissioners shall file in each clerk's office in which their determination of the necessity of draining such lands or duplicate thereof, as provided by section ten of this chapter, is required to be filed, a copy of the said statement, and of the said determination, as to the village or

town or county, in case there be any such, and of the said apportionment, and of the time and manner of payment thereof, certified by them, which, or a duly authenticated copy of which, may be received in evidence in any suit or proceedings in this state.

§ 32. Notice to be given to owners and officers of towns or villages assessed.

They shall also cause notice, written or printed, to be given to each person whose lands are assessed by them, to pay any part of said sum, and also to the supervisor of any town or the president of any village, or the chairman of any board of supervisors of any county that may be assessed by them, which notice shall state the time and place of filing such statement and determination. The said notice shall be served personally upon such supervisor, president or chairman, and also upon each person whose lands are so assessed, when he can be found with due diligence in a county in which such lands or a part thereof are situated, and when not so found, then by delivering such notice to some person of reasonable age and discretion, residing upon said premises, directed to the owner or occupant thereof, or if no such person be found residing upon said premises and such owner or occupant be not found, then by depositing such notice in the post-office duly enveloped and directed to such owner or occupant at his last known place of residence with the postage prepaid. A copy of such notice with the affidavit of the person who served the same, that he delivered the original to the person to whom it was addressed, shall be evidence of such service.

If the owner or occupant of any land to be affected by proceedings taken pursuant to the provisions of this chapter, be unknown and can not, with due and reasonable diligence, be ascertained, or if a place or places where such owner or occupant would probably receive matter transmitted through the post-office can not with reasonable diligence be ascertained, service of any notice required by this chapter may be made upon such owner or occupant by delivery thereof to the clerk of the county in which said land of such owner or occupant or a part thereof is situated.

§ 33. Appeal from assessment.

Any person deeming himself aggrieved thereby or any officer on whom a notice was served as required by section thirty-two of this article, who deems his village or town or county aggrieved, may appeal from the decision of the said commissioners to the court in which such proceedings were instituted or are pending, for the correction of such assessment, provided he serves upon said commissioners notice of said appeal within ten days after the service upon him of the notice of filing such statement, and the party making the appeal shall, within ten days from the service of notice thereof on the commissioners, make a full statement of the grounds of his appeal setting forth the points on which he feels aggrieved by the determination of said commissioners, and file a certified copy thereof in the office of the clerk of the county in which such lands or a portion thereof affected by said proceedings are situated, and present the said statement to the court, and the court shall thereupon proceed, without further delay than such as is necessary to give proper notice to the parties interested, to hear and finally determine the appeal. The court may award costs to the successful party on

such appeal, not exceeding fifteen dollars besides his necessary disbursements to be taxed by the clerk of the court.

§ 34. Levying assessments.

The said commissioners shall within thirty days after filing said statement, in case the same is not appealed from, and within thirty days after notice of the final determination of the appellate court thereon, in case the same is appealed from, levy the assessments herein provided for in one sum or annually thereafter until said sum is paid.

Amended by L. 1917, Ch. 556, in effect May 18, 1917.

§ 35. Towns or villages authorized to borrow money to pay assessments.

In case it is determined that any town or village shall pay any part of such sum, the supervisor of such town, or the board of trustees of such village, is authorized to borrow money on the credit of the town or village, as the case may be, to pay the same, or any instalment thereof, and the board of supervisors shall at their next ensuing annual meeting include the amount assessed on any town in the next tax levy on said town, together with any sum to be paid by said county, which shall be included in the sum to be raised for such county. Money so borrowed shall be upon obligation of the village or town issued at not less than par, bearing interest at six per centum, payable out of the moneys raised by tax levy as aforesaid, and receivable in payment of such taxes.

GENERAL BUSINESS LAW.

(Chapter 20 of the Consolidated Laws.)

§ 35. Municipal regulations.

This article shall not affect the application of any ordinance, by-law or regulation of a municipal corporation relating to hawkers and peddlers within the limits of such corporation, except as otherwise provided in section thirty-two hereof, but the provisions of this article are to be complied with in addition to the requirements of any such ordinance, by-law or regulation.

§ 205. Hotel keepers to provide fire-escapes.

Every owner, lessee, proprietor or manager of a hotel, not fireproof, exceeding two stories in height, shall cause to be placed a rope or other better appliance, to be used as a fire-escape, in each room of such hotel, used as a lodging-room, above the ground floor, which rope or other appliance shall be securely fastened into one of the joists or timbers next adjoining a frame of a window of such room. Such rope or appliance shall be at all times kept coiled up and exposed to the plain view of any occupant of said room, the coil to be fastened in such a slight manner as to be easily and quickly loosened and uncoiled; and if a rope, it shall be not less than three-fourths of an inch in diameter, and of sufficient length to reach from such window to the ground. Such rope, appliance, iron hook or eye and fastenings shall be of sufficient strength to sustain a weight of four hundred pounds. Such owner, lessee, proprietor or manager must cause to be posted in a conspicu-

ous place in each room and hall of such hotel, above the ground floor, a printed notice to the effect that the rope or appliance is so placed in each such room for use in case of fire, and giving full directions for such use.

It is the duty of the chief engineer or the officer performing the duties of a chief engineer of the fire department of a city or village to inspect, or cause to be inspected by some person deputed by him for that purpose, in the months of January and July of each year, each such room of every hotel in his city or village, and to ascertain if the provisions of this section are complied with, and to make and file a written report with the mayor, president or other officer performing the duties of chief executive of such city or village, on or before the fifteenth day of February and August of each year, showing what hotels he had so inspected, and specifying which of them have fully complied with the provisions of this section, and which, if any, have not, and in what respect and to what extent. An owner, lessee, proprietor, manager or other person who obstructs or prevents such inspection is liable to a penalty of fifty dollars for each such offense. Such mayor, president or other chief executive officer, shall sue for such penalty in the name of his city or village, and shall proceed against any person criminally violating this section.

§ 304. Standard and storage of illuminating oils.

No person shall manufacture or have in his possession or sell or give away for illuminating or heating purposes in lamps or stoves within this state, any oil or burning fluid wholly or partly composed of naphtha, coal oil, petroleum or products thereof, or of other substances or materials emitting an inflammable vapor which will flash at a temperature below one hundred degrees Fahrenheit, according to the instruments and tests approved by the state board of health.

No such oil or fluid which will ignite at a temperature below three hundred degrees Fahrenheit shall be burned or be carried as freight in any passenger or baggage car or passenger boat moved by steam or electric power in this state, or in any stage or street car, however propelled, except that coal oil, petroleum and its products may be carried, when securely packed in barrels or metallic packages, in passenger boats propelled by steam when there are no other public means of transportation.

The state board of health shall prescribe the tests and instruments by which such oils and fluids shall be tested, and shall adopt such measures to enforce the provisions of this section and such rules and regulations for collecting, examining and testing samples of such oils and fluids as to them may seem necessary. The public analysts employed by or under the direction of such board shall test the samples of such oils and fluids as may be submitted to them under the rules of the board, for which they shall receive such reasonable compensation as the board may allow.

Naphtha and other illuminating products of petroleum which will not stand the flash test required by this section, may be used for illuminating or heating purposes only in the following cases:

1. In street lamps and open air receptacles apart from any building, factory or inhabited house in which the vapor is burned.

2. In dwellings, factories or other places of business when vaporized in secure tanks or metallic generators made for that purpose, in which the vapor so generated is used for lighting or heating.

3. For use in the manufacture of illuminating gas in gas manufactories situated apart from dwellings and other buildings.

Any person violating any provision of this section shall forfeit to the city or village, or if not in a city or village to the town in which the violation occurs, the sum of one hundred dollars for every such violation, and for every day or part of a day that such violation occurs.

This section shall not apply to the city of New York, and shall not supersede but shall be in addition to the ordinances or regulations of any city or village made pursuant to law for the inspection or control of combustible materials therein.

307. Penalties and the enforcement thereof.

Every person violating the provisions of this article, relating to the test for refined petroleum and oil, shall forfeit to the people of the state the sum of five hundred dollars for each violation.

Every person violating any provision of this article, relating to the storage or keeping for sale of any article, substance or product herein specified, shall forfeit to the people of the state, the sum of two hundred and fifty dollars for each day and part of a day that such violation continues.

Every person violating any provisions of this article, relating to the incumbering of any sidewalk or street, shall forfeit the sum of twenty-five dollars for each day and part of a day that such violation continues, to be paid, if in a city or village, to such city or village, and elsewhere, to the town in which such violation occurs.

The mayor and common council of every city or other proper authorities thereof, shall, by ordinance or resolution, provide for the proper enforcement of the provisions of the preceding sections of this article, and in every such city, the moneys collected by the city as penalties for the violation of any such ordinance or resolution or of any of such provisions, shall be applied to the support of the poor therein, except in Brooklyn, where they shall be paid into the widows and orphans' fund of the fire department, and except in Buffalo, where they shall be paid to the treasurer of the firemen's benevolent association of the city for its use and benefit.

GENERAL CORPORATION LAW.

(Chapter 23 of the Consolidated Laws.)

§ 3. Definitions.

1. A "municipal corporation" includes a county, town, school district, village and city and any other territorial division of the state established by law with powers of local government.

2. A "stock corporation" as a corporation having a capital stock divided into shares, and which is authorized by law to distribute to the holders thereof dividends or shares of the surplus profits of the corporation. A corporation is not a stock corporation because of having issued certificates called certificates of stock, but which are in fact merely certificates of membership, and which is not authorized by law to distribute to its members any dividends or share of profits arising from the operations of the corporation.

3. The term "non-stock corporation" includes every corporation other than a stock corporation.

4. A "moneyed corporation" is a corporation formed under or subject to the banking or the insurance law.

5. A "domestic corporation" is a corporation incorporated by or under the laws of the state or colony of New York. Every corporation which is not a domestic corporation is a foreign corporation, except as provided by the code of civil procedure for the purpose of construing such code.

6. The term "directors," when used in relation to corporations, shall include trustees or other persons, by whatever name known, duly appointed or designated to manage the affairs of the corporation.

7. The term "certificate of incorporation" shall include articles of association or any other written instruments required by law to be filed, to effect the incorporation of a corporation, including a certified copy of an original certificate of incorporation filed for such purpose in pursuance of law.

8. The term "member of a corporation" shall include every person having a right to vote at a meeting of the corporation for the election of directors, other than a person having a right to vote only upon a proxy.

9. The term "office of a corporation" means its principal office within the state, or principal place of business within the state if it has no principal office therein.

10. The term "business of a corporation," when used with reference to a non-stock corporation, includes the operations for the conduct of which it is incorporated.

11. The term "corporate law" or "laws," when used in any law forming a part of the consolidation of the general laws of the state of which this chapter is a part, means the general statutes of this state relating to corporations included in such consolidation.

12. The existence of an easement in real property acquired or reserved by a municipal corporation, a railroad corporation or other transportation corporation, shall not be deemed an encumbrance upon such real property under any law relating to investments in mortgages upon real property by corporations, trustees, executors, administrators, guardians or other persons holding trust funds, but the effect of such an easement upon the real property which it affects, shall be taken into consideration in determining the value thereof.

Subd. added by L. 1914, ch. 128. In effect Apr. 6, 1914.

§ 10. Limitation of powers; provisions of certificate.

1. No corporation shall possess or exercise any corporate powers not given by law, or not necessary to the exercise of the powers so given.

2. The certificate of incorporation of any corporation may contain any provision for the regulation of the business and the conduct of the affairs of the corporation, and any limitation upon its powers, or upon the powers of its directors and stockholders, which does not exempt them from the performance of any obligation or the performance of any duty imposed by law.

§ 11. Grant of general powers.

Every corporation as such has power, though not specified in the law under which it is incorporated:

1. To have succession for the period specified in its certificate of incorporation or by law, and perpetually when no period is specified.

2. To have a common seal, and alter the same at pleasure.

3. To acquire by grant, gift, purchase, devise or bequest, to hold and to dispose of such property as the purposes of the corporation shall require, subject to such limitations as may be prescribed by law.

4. To appoint such officers and agents as its business shall require, and to fix their compensation, and

5. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and the transfer of its stock, if it has any, and the calling of meetings of its members. Such

by-laws may also fix the amount of stock, which must be represented at meetings of the stockholders in order to constitute a quorum, unless otherwise provided by law. By-laws duly adopted at a meeting of the members of the corporation shall control the action of its directors. No by-law adopted by the board of directors regulating the election of directors or officers shall be valid unless published for at least once a week for two successive weeks in a newspaper in the county where the election is to be held, and at least thirty days before such election. Subdivisions four and five of this section shall not apply to municipal corporations.

INSURANCE LAW.

(Chapter 28 of the Consolidated Laws.)

§ 133. Payment of tax by agents of foreign fire insurance corporations to fire departments.

Except in the cities of New York and Buffalo there shall be paid to the treasurer of the fire department of every city or village of this state, whether incorporated or unincorporated, having a fire department, company or organization, for the use and benefit of such department, or to the treasurer of such fire department within the fire limits, as established by law, of an unincorporated village and when no treasurer of a fire department exists, then to the treasurer or other fiscal officer of such city or village, or in case of an unincorporated village to the supervisor of the town in which such village is situated who, for the purposes of this chapter, shall have the same powers as the treasurers of fire departments, on the first day of February of each year, by every person who shall act as agent for or on behalf of any foreign fire insurance corporation, association or individuals which insure property against loss or injury by fire, the sum of two dollars upon the hundred dollars, and at that rate, upon the amount of all premiums which during the year or part of a year ending on the last preceding thirty-first day of December shall have been received by such agent or person, or received by any other person for him, for any insurance effected or procured by him as such agent or broker against loss or injury by fire upon property situate within the corporate limits of such city or village, or within the fire limits of such unincorporated village. Every city, except the city of New York, village, fire department, fire, hose or hook and ladder company, fire district, or fire district association, firemen's benevolent associations, exempt or veteran firemen's associations, and every officer, board of officers and association receiving any portion of the tax directed to be paid by this section or any similar provision of law, shall within ten days after the receipt of the same, pay to the treasurer of the Firemen's association of the state of New York, ten per centum of the amount so received by it or him, for the support or maintenance of the Volunteer Firemen's home at Hudson, New York. On or before the first day of April in each year every such city, village, fire department, fire, hose or hook and ladder company, fire district, or fire district association, firemen's benevolent associations, exempt or veteran firemen's associations, officer, board of officers and association, shall, by its chief fiscal officer, treasurer, or other officer whose duty it may be to receive such funds, deliver to the treasurer of the Firemen's association of the state of New York a statement showing the name of each person or corporation from whom any such tax shall have been received and the amount paid

by each, which statement shall be verified by the officer making the same to the effect that the same is correct and true and that such statement correctly shows the amount of such tax received by such city, village, fire department, fire, hose or hook and ladder company, fire district, or fire district association, firemen's benevolent associations, exempt or veteran firemen's associations, officer, board of officers and association since the first day of April in the preceding year. Any such city, village, fire department, fire, hose or hook and ladder company, fire district, or fire district association, firemen's benevolent associations, exempt or veteran firemen's associations, officer, board of officers and association receiving any portion of such tax and failing to make and deliver such verified statement as herein provided or omitting to pay ten per centum thereof to the treasurer of the Firemen's association of the state of New York as provided herein within the time above allowed shall forfeit the sum of fifty dollars in addition to the amount of such tax to be recovered in an action which may be maintained by said Firemen's association of the state of New York in any of the courts of this state.

§ 134. Undertaking of agent.

No person shall, as agent for any such foreign insurance corporation, association or individuals, effect any insurance upon any property situate in any city or village of this state upon which the sums specified in the preceding section are required to be paid; or as such agent procure such insurance to be effected, until he shall have executed and delivered to the officer to whom such account is to be rendered and such payments to be made, a bond to such fire department in the penal sum of five hundred dollars, with such sureties as such treasurer, supervisor or other fiscal officer shall approve, with a condition that he will annually render to such treasurer, supervisor or other fiscal officer, on the first day of February in each year a just and true account, verified by his oath that the same is true, of all premiums which, during the year ending on the thirty-first day of December preceding such report, shall have been received by him or any other person for him, for any insurance against loss or injury by fire upon property situated in such city or village, which shall have been effected or procured by him to have been effected by any such corporation, association or individuals, and that he will annually, on the first day of February in each year, pay to such treasurer or supervisor or other fiscal officer two dollars upon every hundred dollars, and at that rate upon the amount of such premiums. If any such agent shall desire to transact business in more than one city, town or village, he may, instead of executing and delivering a separate bond for each such city, town or village, as required by this section, execute and file with the superintendent of insurance a bond in the penal sum of fifteen hundred dollars, with such sureties as the superintendent shall approve, conditioned that he will make his account and pay the sums so required to be paid in each city, town or village in which he shall effect insurance. Any such corporation, association or individual, having authority to transact business in this state, on filing a bond in the penal sum of two thousand five hundred dollars with the superintendent of insurance that it will make its account and pay the sum so required to be paid, may effect such insurance in any city, town or village wherein it has no agent.

Amended by L. 1913, ch. 304. In effect Apr. 17, 1913.

§ 135. Penalty for refusal to pay.

Every such person who shall effect any such insurance without having executed and delivered such bond, shall, for each offense, forfeit two hundred dollars, for the use and benefit of the fire department of such city or village, to be collected by and in the name of the fire department, treasurer or chief fiscal officer of the city or village in which the property insured is situated. The treasurer or chief fiscal officer of any city or village having no incor-

porated firemen's relief or benevolent society receiving any money under the laws of this state, shall, on or before the fifteenth day of February in each year, apportion and pay over all such moneys so received to the treasurers of such of the several fire companies as are duly recognized by the common council, trustees or supervisors of such city or village.

If he shall neglect or refuse to perform any or all of the duties required by this section, he shall forfeit the sum of two hundred dollars for every such neglect or refusal for the use and benefit of the fire department of such city or village, and the foreman of any fire company may sue for and maintain an action in the name of and for the benefit of such company for its proportion of the penalties prescribed by this section.

§ 136. Penalty for refusal to exhibit foreign fire policies.

Every person whose property shall be insured in violation of section one hundred and thirty-five of this chapter, and every person having the care or charge of property so insured, or of policies of insurance placed in violation of such section, as agent or trustee for another, who shall refuse or neglect to exhibit to the officer, entitled by section one hundred and thirty-four of this chapter to receive the per centum of premium in such section provided, all policies so placed upon such property, or shall neglect or refuse to give such officer full information as to when, by whom, and in what corporation or corporations such property shall be so insured, and the name of the agent, broker or other person connected with the effecting of such insurance, upon demand being duly made by such officer, shall become liable to an action by and in the name of the fire department, organization or company of which such officer shall be the treasurer, for the sum of one hundred dollars for each such neglect or refusal.

All persons acting as brokers between any such agent or any such corporation and the assured, shall, within ten days after effecting any insurance specified in section one hundred and thirty-five, notify the officer entitled to receive the tax upon the premium upon such insurance of the fact of such insurance, together with the precise location of the property, the name of the insurer and the amount of the premium to be paid by the assured. Any broker wilfully neglecting or refusing to comply with the provisions of this section shall be liable to a like action and like penalty brought in the like manner hereinbefore provided. Actions brought under this section must be tried in the county in which the property alleged to be so insured is situated.

All moneys received pursuant to this section shall be apportioned and paid over in the same manner as provided in the preceding section of this chapter for the apportionment and payment of moneys received pursuant to such section and under a like penalty.

JUDICIARY LAW.

(Chapter 30 of the Consolidated Laws.)

§ 546. Exemption from jury duty.

Each of the following persons, although qualified, is entitled to exemption from service, as a trial juror, upon his claiming exemption therefrom:

1. A clergyman, or a minister of any religion, officiating as such, and not following any other calling.

2. A resident officer of, or an attendant, assistant, teacher, or other person, actually employed in, a state asylum for lunatics, idiots or habitual drunkards.

3. The agent or warden of a state prison; the keeper of a county jail; or a person actually employed in a state prison or county jail, and the keeper of every almshouse.

4. A practicing physician or surgeon, having patients requiring his daily professional attention, a licensed pharmacist actually engaged in his profession as a means of livelihood, a duly registered veterinary surgeon actually engaged in his profession as a means of livelihood, and a duly licensed embalmer actually engaged in his profession as a means of livelihood.

5. An attorney or counsellor at law, regularly engaged in the practice of the law as a means of livelihood.

6. A professor or teacher in a college or academy, or an editor, editorial writer, artist or reporter of a daily newspaper or press association regularly employed as such and not following any other vocation.

7. A person actually employed in a glass, cotton, linen, woolen, or iron manufacturing company, by the year, month, or season.

8. A superintendent, engineer, or collector, on a canal, authorized by the laws of the state, which is actually constructed and navigated.

9. A master, engineer, assistant-engineer, or fireman, actually employed upon a steam vessel, making regular trips.

10. A superintendent, conductor, or engineer, employed by a railroad company, other than a street railroad company; or an operator, or assistant-operator, employed by a press association or a telegraph company, who is actually doing duty in an office, or along the railroad or telegraph line of the company or association by which he is employed.

11. An officer, non-commissioned officer, musician, or private of the national guard of the state, performing military duty; or a person who has been honorably discharged from the national guard, after five years' service, in either capacity.

12. A person who has been honorably discharged from the military forces of the state, after seven years' faithful service therein. But in order to entitle a person to exemption, under this subdivision, his service must have been performed before the twenty-third day of April, eighteen hundred and sixty-two, either as a general or staff officer, or as an officer, non-commissioned officer, musician, or private in a uniformed battalion, company, or troop of the militia of the state, and armed, uniformed, and equipped, according to law; or a portion thereof, during that period and in that capacity, and the remainder, since the twenty-third day of April, eighteen hundred and sixty-two, as a member of the national guard of the state.

13. A member of a fire company, or fire department, duly organized according to the laws of the state, and performing his duties therein; or a person who, after faithfully serving five successive years in such a fire company, or fire department, has been honorably discharged therefrom.

14. A duly licensed engineer of steam boilers, actually employed as such.

15. A person otherwise specially exempted by law.

LABOR LAW.

(Chapter 31 of the Consolidated Laws.)

§ 3. Hours to constitute a day's work.

Eight hours shall constitute a legal day's work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law. This section does not prevent an agreement for over work at an increased compensation except upon work by or for the state or a municipal corporation, or by contractors or subcontractors therewith. Each contract to which the state or a municipal corporation or a commission appointed pursuant to law is a party which may involve the employment of laborers, workmen or mechanics shall contain a stipulation that no laborer, workman or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day except in cases of extraordinary emergency caused by fire, flood or danger to life or property. The wages to be paid for a legal day's work as hereinbefore defined to all classes of such laborers, workmen or mechanics upon all such public works, or upon any material to be used upon or in connection therewith, shall not be less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where such public work on, about or in connection with which such labor is performed in its final or completed form is to be situated, erected or used. Each such contract hereafter made shall contain a stipulation that each such laborer, workman or mechanic, employed by such contractor, subcontractor or other person on, about or upon such public work, shall receive such wages herein provided for. Any person or corporation who violates any provision of this section shall be guilty of a misdemeanor and upon conviction shall be punished, for a first offense by a fine or five hundred dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment; for a second offense by a fine of one thousand dollars, and in addition thereto, the contract on which the violation has occurred shall be forfeited; and no such person or corporation shall be entitled to receive any sum nor shall any officer, agent or employee of the state or of a municipal corporation pay the same or authorize its payment from the funds under his charge or control to any such person or corporation for work done upon any contract on which the contractor has been convicted of a second offense in violation of the provisions of this section. Nothing in this section shall be construed to apply to stationary firemen in state hospitals nor to persons regularly employed in state institutions, except mechanics, nor shall it apply to engineers, electricians and elevator men in the department of public buildings during the annual session of the legislature, nor to the construction, maintenance and repair of highways outside the limits of cities and villages.

Amended by L. 1909, Ch. 292; L. 1913, Chs. 467 and 494, and L. 1916, Ch. 152, in effect April 7, 1916.

§ 4. Violations of the labor law.

Any officer, agent or employee of this state or of a municipal corporation therein having a duty to act in the premises who violates, evades or knowingly permits the violation or evasion of any of the provisions of this chapter shall be guilty of malfeasance in office and shall be suspended or removed by the authority having power to appoint or remove such officer, agent or employee; otherwise by the governor. Any citizen of this state may maintain

proceedings for the suspension or removal of such officer, agent or employee who knowingly permits the violation of any of the provisions of this chapter. Amended by L. 1916, Ch. 152, in effect April 7, 1916.

§ 10. Cash payment of wages.

Every manufacturing, mining, quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph and telephone company, every express company, every corporation engaged in harvesting and storing ice, and every water company, not municipal, and every person, firm or corporation, engaged in or upon any public work for the state or municipal corporation thereof, either as a contractor or a sub-contractor therewith, shall pay to each employee engaged in his, their or its business the wages earned by such employee in cash. No such company, person, firm or corporation shall hereafter pay such employees in scrip, commonly known as store money-orders. No person, firm or corporation engaged in carrying on public work under contract with the state or with any municipal corporation of the state, either as a contractor or subcontractor therewith, shall, directly or indirectly, conduct or carry on what is commonly known as a company store, if there shall, at the time, be any store selling supplies within two miles of the place where such contract is being executed. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor.

§ 11. When wages are to be paid.

Every corporation or joint-stock association, or person carrying on the business thereof by lease or otherwise, shall pay weekly to each employee the wages earned by him to a day not more than six days prior to the date of such payment.

But every person or corporation operating a steam surface railroad shall, on or before the first day of each month, pay the employees thereof the wages earned by them during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month pay the employees thereof the wages earned by them during the last half of the preceding calendar month.

§ 12. Penalty for violation of preceding section.

If a corporation or joint-stock association, its lessee or other person carrying on the business thereof, shall fail to pay the wages of all its employees, as provided in this article, it shall forfeit to the people of the state the sum of fifty dollars for each such failure, to be recovered by the commissioner of labor in his name of office in a civil action.

Amended by L. 1909, ch. 206. In effect April 17, 1909.

§ 14. Preference in employment of persons upon public works.

In the construction of public works by the state or a municipality, or by persons contracting with the state or such municipality, preference shall be given to citizens over aliens. Aliens may be employed when citizens are not available.

In each contract for the construction of public works a provision shall be inserted, to the effect that, if the provisions of this section are not complied with, the contract shall be void. All boards, officers, agents or employees of cities of the first class of the state, having the power to enter into contracts which provide for the expenditure of public money on public works, shall file in the office of the commissioner of labor the names and addresses of all contractors having contracts with said cities of the state. Upon the letting of new contracts the names and addresses of such new contractors shall likewise

by-laws may also fix the amount of stock, which must be represented at meetings of the stockholders in order to constitute a quorum, unless otherwise provided by law. By-laws duly adopted at a meeting of the members of the corporation shall control the action of its directors. No by-law adopted by the board of directors regulating the election of directors or officers shall be valid unless published for at least once a week for two successive weeks in a newspaper in the county where the election is to be held, and at least thirty days before such election. Subdivisions four and five of this section shall not apply to municipal corporations.

INSURANCE LAW.

(Chapter 28 of the Consolidated Laws.)

§ 133. Payment of tax by agents of foreign fire insurance corporations to fire departments.

Except in the cities of New York and Buffalo there shall be paid to the treasurer of the fire department of every city or village of this state, whether incorporated or unincorporated, having a fire department, company or organization, for the use and benefit of such department, or to the treasurer of such fire department within the fire limits, as established by law, of an unincorporated village and when no treasurer of a fire department exists, then to the treasurer or other fiscal officer of such city or village, or in case of an unincorporated village to the supervisor of the town in which such village is situated who, for the purposes of this chapter, shall have the same powers as the treasurers of fire departments, on the first day of February of each year, by every person who shall act as agent for or on behalf of any foreign fire insurance corporation, association or individuals which insure property against loss or injury by fire, the sum of two dollars upon the hundred dollars, and at that rate, upon the amount of all premiums which during the year or part of a year ending on the last preceding thirty-first day of December shall have been received by such agent or person, or received by any other person for him, for any insurance effected or procured by him as such agent or broker against loss or injury by fire upon property situate within the corporate limits of such city or village, or within the fire limits of such unincorporated village. Every city, except the city of New York, village, fire department, fire, hose or hook and ladder company, fire district, or fire district association, firemen's benevolent associations, exempt or veteran firemen's associations, and every officer, board of officers and association receiving any portion of the tax directed to be paid by this section or any similar provision of law, shall within ten days after the receipt of the same, pay to the treasurer of the Firemen's association of the state of New York, ten per centum of the amount so received by it or him, for the support or maintenance of the Volunteer Firemen's home at Hudson, New York. On or before the first day of April in each year every such city, village, fire department, fire, hose or hook and ladder company, fire district, or fire district association, firemen's benevolent associations, exempt or veteran firemen's associations, officer, board of officers and association, shall, by its chief fiscal officer, treasurer, or other officer whose duty it may be to receive such funds, deliver to the treasurer of the Firemen's association of the state of New York a statement showing, the name of each person or corporation from whom any such tax shall have been received and the amount paid

by each, which statement shall be verified by the officer making the same to the effect that the same is correct and true and that such statement correctly shows the amount of such tax received by such city, village, fire department, fire, hose or hook and ladder company, fire district, or fire district association, firemen's benevolent associations, exempt or veteran firemen's associations, officer, board of officers and association since the first day of April in the preceding year. Any such city, village, fire department, fire, hose or hook and ladder company, fire district, or fire district association, firemen's benevolent associations, exempt or veteran firemen's associations, officer, board of officers and association receiving any portion of such tax and failing to make and deliver such verified statement as herein provided or omitting to pay ten per centum thereof to the treasurer of the Firemen's association of the state of New York as provided herein within the time above allowed shall forfeit the sum of fifty dollars in addition to the amount of such tax to be recovered in an action which may be maintained by said Firemen's association of the state of New York in any of the courts of this state.

§ 134. Undertaking of agent.

No person shall, as agent for any such foreign insurance corporation, association or individuals, effect any insurance upon any property situate in any city or village of this state upon which the sums specified in the preceding section are required to be paid; or as such agent procure such insurance to be effected, until he shall have executed and delivered to the officer to whom such account is to be rendered and such payments to be made, a bond to such fire department in the penal sum of five hundred dollars, with such sureties as such treasurer, supervisor or other fiscal officer shall approve, with a condition that he will annually render to such treasurer, supervisor or other fiscal officer, on the first day of February in each year a just and true account, verified by his oath that the same is true, of all premiums which, during the year ending on the thirty-first day of December preceding such report, shall have been received by him or any other person for him, for any insurance against loss or injury by fire upon property situated in such city or village, which shall have been effected or procured by him to have been effected by any such corporation, association or individuals, and that he will annually, on the first day of February in each year, pay to such treasurer or supervisor or other fiscal officer two dollars upon every hundred dollars, and at that rate upon the amount of such premiums. If any such agent shall desire to transact business in more than one city, town or village, he may, instead of executing and delivering a separate bond for each such city, town or village, as required by this section, execute and file with the superintendent of insurance a bond in the penal sum of fifteen hundred dollars, with such sureties as the superintendent shall approve, conditioned that he will make his account and pay the sums so required to be paid in each city, town or village in which he shall effect insurance. Any such corporation, association or individual, having authority to transact business in this state, on filing a bond in the penal sum of two thousand five hundred dollars with the superintendent of insurance that it will make its account and pay the sum so required to be paid, may effect such insurance in any city, town or village wherein it has no agent.

Amended by L. 1913, ch. 304. In effect Apr. 17, 1913.

§ 135. Penalty for refusal to pay.

Every such person who shall effect any such insurance without having executed and delivered such bond, shall, for each offense, forfeit two hundred dollars, for the use and benefit of the fire department of such city or village, to be collected by and in the name of the fire department, treasurer or chief fiscal officer of the city or village in which the property insured is situated. The treasurer or chief fiscal officer of any city or village having no incor-

4. The planting or cultivation of trees, shrubs, flowers or plants in or about a lot therein.

A cemetery corporation may accept a conveyance of real property held by a religious corporation for burial purposes, or by trustees for such purposes, if all such trustees, living and residing in this state, unite in the conveyance, subject to all burdens, trusts and conditions to which the title of such grantors was subject. Lots previously sold in any such lands, and grants for burial purposes therein previously made, shall not be affected by any such conveyance; nor shall any grave, monument or other erection thereupon, or any remains therein, be disturbed or removed without the consent of the lot owner, or if there be no such owner, without the consent of the heirs of the persons whose remains are buried in such grave. No cemetery shall hereafter be located in any city or incorporated village, without the consent of the common council of such city, or the board of trustees of such village, as the case may be.

5. The perpetual care and keeping in order of any lot, or part of lot therein, as prescribed by the creator in the trust instrument, or by his successor in right or interest in such lot, by a new or further declaration of trust, in writing. Such trust fund shall be invested and kept invested in such securities as savings banks are permitted to invest in. The income of such trust fund shall be applied to the purposes above stated. The trustees of the corporation, or a majority of them, shall make, sign and file, at the annual meeting, a report countersigned by the treasurer, concerning all trust funds held under this subdivision and of the use made of the income thereof.

Amended by L. 1909, Ch. 274, in effect April 30, 1909.

Subd. 5, added by L. 1914, Ch. 234, in effect April 8, 1914.

ARTICLE V.

Fire Corporations.

Section 100. Certificate of incorporation.

101. Incorporation of fire corporations in towns legalized.
102. Powers.
103. Fire corporation may take by will.
104. Duty of trustees, directors or managers to file report.
105. General powers conferred.

§ 100. Certificate of incorporation.

Ten or more persons may become a fire, hose, protective or hook and ladder corporation by making, acknowledging and filing a certificate, stating the particular object for which the corporation is to be formed; the name of the proposed corporation; the city, village, fire district, or town in which it proposes to act; the number of directors; and the names and places of residence of the persons to be directors until its first annual meeting.

Such certificate shall not be filed without the approval indorsed thereupon, or annexed thereto, of a justice of the supreme court of the judicial district in which said corporation proposes to act, nor unless there is annexed thereto a certified copy of a resolution of the board of trustees of the village or the fire commissioners of a fire district or the approval of the mayor of the city, or, if not within a village, city or fire district, a resolution of the town board of the town in which the corporation proposes to act, or if the territory to be served by such corporation is located in more than one town, a resolution of the town board of each town in which any part of the territory in which said corporation proposes to act is located, consenting to its incorporation.

On filing such certificate, the signers thereof, their associates and successors, shall be a corporation in accordance with the provisions of such certificate.

In towns outside of villages and fire districts, the consent of the town board or boards to the incorporation of said corporations shall be an appointment of the several persons named in the certificate of incorporation as town firemen. Other persons may be elected as members of the corporation by the members thereof under such by-laws as may be adopted from time to time by such corporation, but the election of a member must be confirmed by the town board of the town in which he resides.

Such corporations shall, in law, be capable of taking, receiving, purchasing and holding real estate for the purposes of their incorporation, and for no other purpose.

As amended by L. 1916, Ch. 595, in effect May 19, 1916.

§ 101. Incorporation of fire corporations in towns legalized.

Any fire, hose, protective or hook and ladder corporation heretofore organized under chapter three hundred and ninety-seven of the laws of eighteen hundred and seventy-three, or chapter three hundred and fifteen of the laws of eighteen hundred and eighty-seven, or under this article, with the consent of the town board, if the territory served by such corporation is located in a town, or with the consent of two or more town boards, if the territory served by such corporation is located in two or more towns, is hereby legalized and confirmed, notwithstanding the omission of any town board to appoint the members of such corporations as town firemen, or to exercise governmental control over them. Any such corporation shall hereafter be subject to the provisions of this article.

As amended by L. 1916, Ch. 595, in effect May 19, 1916.

§ 102. Powers.

A fire, hose, protective or a hook and ladder corporation, incorporated under this article or under a law repealed by this chapter, shall only engage in such business as properly belongs to a fire, hose, protective or hook and ladder corporation, in the city, village, fire district or town or towns named in its certificate or as specially authorized by law. In participating in the prevention and extinguishment of fires, such corporation shall be under the control of the city, village, fire district or town authorities having by law, control over the prevention or extinguishment of fires therein. Such authorities may adopt rules and regulations for their government and control. Where a corporation which is subject to the provisions of this article furnishes fire protection to an incorporated village under a contract with the board of trustees thereof or with the consent of such village board of trustees or the fire commissioners of such village, residents of such village may be members of such fire corporations and such fire corporations and the members thereof shall be exclusively under the government and control of the town board of the town in which such fire corporation maintains its apparatus.

As amended by L. 1916, Ch. 595, in effect May 19, 1916.

§ 103. Fire corporations may take by will.

Any corporation formed under chapter three hundred and ninety-seven of the laws of eighteen hundred and seventy-three or chapter three hundred and fifteen of the laws of eighteen hundred and eighty-seven or under this article, may take, hold or receive any property, real or personal, by virtue of any devise or bequest contained in any last will and testament.

As amended by L. 1916, Ch. 595, in effect May 19, 1916.

§ 104. Duty of trustees, directors or managers to file report.

It shall be the duty of the trustees, directors or managers of all corporations formed under this article in unincorporated villages, or a majority of them, on or before the fifteenth day of January in each year, to make and file in the county clerk's office, where the certificate of incorporation is filed a certificate under their hands, stating the names of the trustees, directors or managers and officers of such corporation, with an inventory of the property and effects and liabilities thereof, with an affidavit of said trustees, directors or managers, or a majority of them, of the truth of such certificate and inventory; and also a like affidavit that such corporation has not been engaged, directly or indirectly, in any other business than such as is set forth in the certificate of incorporation.

As amended by L. 1916, Ch. 595, in effect May 19, 1916.

§ 105. General powers conferred.

Every corporation formed under this article or subject to its provisions shall possess the general powers conferred by and be subject to the provisions and restrictions of the general corporation law; and every active fireman who shall be a member of any department or company organized under the provisions of this article, or organized under any other law and which is now subject to the provisions of this article, or who shall have served five years as a member of such corporation and has been honorably discharged therefrom shall be entitled to all the rights granted to volunteer firemen or exempt volunteer firemen by any statute of this state.

As amended by L. 1916, Ch. 595, in effect May 19, 1916.

MILITARY LAW.

(Chapter 36 of the Consolidated Laws.)

§ 1. Persons subject to military duty; exemptions.

The militia of the state shall consist of that part of the militia of the United States resident within the state.

Amended by L. 1917, Ch. 644, in effect May 24, 1917.

PERSONAL PROPERTY LAW.¹

(Chapter 41 of the Consolidated Laws.)

§ 10. Definitions.

The term "income of personal property," as used in this article, means the income or profits arising from personal property, and includes the interest of money and the produce of stock.

¹ See Schouler on Personal Property, 5th Edition.

§ 11. Suspension of ownership.

The absolute ownership of personal property shall not be suspended by any limitation or condition, for a longer period than during the continuance and until the termination of not more than two lives in being at the date of the instrument containing such limitation or condition; or, if such instrument be a last will and testament, for not more than two lives in being at the death of the testator. In other respects limitations of future or contingent interests in personal property, are subject to the rules prescribed in relation to future estates in real property.

§ 12. Gifts and bequests of personal property for charitable purposes.

1. No gift, grant, or bequest to religious, educational, charitable, or benevolent uses, which shall in other respects be valid under the laws of this state, shall be deemed invalid by reason of the indefiniteness or uncertainty of the persons designated as the beneficiaries thereunder in the instrument creating the same. If in the instrument creating such a gift, grant, or bequest there is a trustee named to execute the same, the legal title to the property given, granted, or bequeathed for such purposes shall vest in such trustee. If no person be named as trustee then the title to such property shall vest in the supreme court.

2. The supreme court shall have control over gifts, grants and bequests in all cases provided for by subdivision one of this section, and, whenever it shall appear to the court that circumstances have so changed since the execution of an instrument containing a gift, grant or bequest to religious, educational, charitable or benevolent uses as to render impracticable or impossible a literal compliance with the terms of such instrument, the court may, upon the application of the trustees or of the person or corporation having the custody of the property, and upon such notice as the court shall direct, make an order directing that such gift, grant, or bequest shall be administered or expended in such manner as in the judgment of the court will most effectually accomplish the general purpose of the instrument, without regard to and free from any specific restriction, limitation or direction contained therein; provided, however, that no such order shall be made without the consent of the donor or grantor of the property if he be living.

Amended by L. 1909, ch. 144. In effect April 3, 1909.

3. The attorney-general shall represent the beneficiaries in all such cases, and it shall be his duty to enforce such trusts by proper proceedings in the courts.

4. Whenever heretofore or hereafter any voluntary association or committee shall have received by public subscription from contributors exceeding one thousand in number a fund for a charitable or benevolent purpose, a portion of which shall remain unexpended after the expiration of five years from its receipts, and it shall appear that a literal compliance with the terms of the subscription is impracticable, the supreme court may, on the application of such association, or of the treasurer of the committee having the custody of such unexpended balance, and upon twenty days' personal notice to the attorney-general, and four weeks' notice by publication once a week for four successive weeks in two newspapers of general circulation published in the county in which the treasurer of such association or of such committee shall reside, or, if such treasurer shall reside out of the state in the county in which at least ten per centum of the contributors to such fund shall have resided at the time of its receipt, otherwise in such manner as the court shall prescribe, to the contributors as a class, to ten specified members of such class, and to the trustees of such association, or to the surviving members of such committee, make an order directing that such balance be transferred for administration to such domestic corporation as in the judgment of the court will most effectually accomplish the general purpose for which said fund shall have been collected, without regard to and free from any express or implied limitation, restriction or direction upon which the subscription shall have been made; and on the transfer of said fund to the corporation designated in such order, said voluntary association and its officers and trustees, or said committee and its treasurer and other officers, shall be fully exonerated and discharged from all liability to account therefor.

Subd. added by L. 1911, ch. 220. In effect June 1, 1911.

§ 13. Certain educational and other charitable uses authorized.

1. Personal property may be granted, bequeathed, and conveyed to any incorporated college or other literary incorporated institution in this state, to be held in trust for any one or more of the following purposes:

- (1). To establish and maintain an observatory;
- (2). To found and maintain professorships and scholarships;
- (3). To provide and keep in repair a place for the burial of the dead; or
- (4). For any other specific purposes comprehended in the general objects authorized by their respective charters.

The said trusts may be created, subject to such conditions and visitations as may be prescribed by the grantor or donor, and agreed to by said trustees, and all property which shall hereafter be granted to any incorporated college or other literary incorporated institution in trust for any of the aforesaid purposes, may be held by such college or institution upon such trusts, and subject to such conditions and visitations as may be prescribed and agreed to as aforesaid.

2. Personal estate may be granted, bequeathed, and conveyed to the corporation of any city or village of this state, to be held in trust for any purpose of education, or the diffusion of knowledge, or for the relief of distress, or for parks, gardens, or other ornamental grounds, or grounds for the purposes of military parades and exercise, or health and recreation, within or near such incorporated city or village, upon such conditions as may be prescribed by the grantor or donor, and agreed to by such corporation.

3. Personal estate may be granted, or bequeathed to commissioners of common schools of any town, and to trustees of any school district, in trust for the benefit of the common schools of such town, or for the benefit of the schools of such district.

4. The trusts authorized by this section may continue for such time as may be necessary to accomplish the purposes for which they may be created.

§ 13a. Trusts for care of cemetery lots, et cetera.

Gifts, grants and bequests of personal property, in trust for the purpose of perpetual care and maintenance, improvement or embellishment of private burial lots, in or outside of cemeteries, and the walks, fences, monuments, structures and tombs thereon are permitted and shall be deemed to be for charitable and benevolent uses; and shall not be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instrument erecting the same, nor shall they be deemed invalid as violating any existing laws against perpetuities or suspension of the power of alienation of title to property. But nothing herein contained shall affect any existing authority of courts to pass upon the reasonableness of the amount of such gift, grant or bequest. Any cemetery association may act as trustee of and execute any such trust with respect to lots, walks, fences, monuments, structures and tombs both within its own cemetery limits and outside of any cemetery under its control, but within the county where such cemetery is located, whether such power be otherwise included in its corporate powers or not.

Added by L. 1909, ch. 218, and amended by L. 1911, ch. 430. In effect June 23, 1911.

§ 14. Certain gifts for charitable and educational uses regulated.

1. Any person desiring, in his lifetime, to promote the public welfare by founding, endowing and having maintained a public library, museum or other educational institutions, or a chapel and crematory, within this state, may to that end and for such purposes by grant, in writing, convey to a trustee, or any number of trustees, named in such grant, and to their successors, any personal property belonging to such person.

2. The person making such grant may therein designate:

- (1). The nature, object and purposes of the institution to be founded, endowed and maintained.

(3). The name by which it shall be known.

(3). The powers and duties of the trustee or trustees and the manner in which he or they shall account, and to whom, if accounting be required; but such powers and duties shall not be held to be exclusive of other powers which may be necessary to enable such trustee or trustees to fully carry out the object of such grant.

(4). The mode and manner, and by whom, the successors to the trustee or trustees named in the grant are to be appointed.

(5). Such rules and regulations for the management of the property conveyed as the grantor may elect to prescribe; but such rules shall, unless the grantor otherwise prescribe, be deemed advisory only, and shall not preclude such trustee or trustees from making such changes as new conditions may from time to time require.

(6). The place or places where, and the time when, the building or buildings necessary and proper for the institution shall be erected, and the character and extent thereof. The person making such grant may therein provide for all other things necessary and proper to carry out the purposes thereof, and especially may such person provide for such lectures, exhibitions, instruction or amusement in connection with such institution as he may deem desirable.

3. The trustee or trustees named in such grant and their successors, may in the name of the institution, as designated in such grant, sue and defend, in relation to the trust property and in relation to all matters affecting the institution endowed and established by such grant.

4. The person making such grant, by a provision therein, may elect, in relation to the property conveyed and in relation to the erection, maintenance and management of such institution, to perform, during his life, all the duties and exercise all the powers which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees therein named. If the person making such grant, and making the election aforesaid, be a married person, such person may further provide that if the wife of such person survive him, then such wife, during her life, may, in relation to the property conveyed, and in relation to the erection, maintenance and management of such institution, perform all the duties and exercise all the powers, which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees therein named, and in all such cases the powers and duties conferred and imposed by such grant upon the trustee or trustees therein named, shall be exercised and performed by the person making such grant, or by his wife during his or her life, as the case may be; provided, however, that upon the death of such person, or his surviving wife, as the case may be, such powers and duties shall devolve upon and shall be exercised by the trustee or trustees named in the grant and their successors.

5. The person making such grant may therein reserve the right to alter, amend or modify the terms and conditions thereof and the trusts therein created, in respect to any of the matters mentioned or referred to in paragraphs numbered one to six inclusive, of subdivision two hereof; and may also therein reserve the right, during the life of such person, of absolute dominion over the personal property conveyed, without liability to account therefor in any manner whatever, and without any liability over against the estate of such person; and if any such person be married, such person may, in said grant, further provide that if his wife survive him, then such wife, during her life, may have the same dominion over such personal property, without liability to account therefor in any manner whatever, and without liability over against the estate of either of the spouses.

6. Any such grant may be executed, acknowledged and recorded in the same manner as is now provided by law for the execution, acknowledging and recording of grants of real property.

7. No suit, action or proceedings shall be commenced or maintained by any person to set aside, annul or affect said conveyance, or to affect the title to the property conveyed, or the right to the possession, or to the issues and profits thereof, unless the same be commenced within two years after the

date of filing such grant for record; nor shall any defense be made to any suit, action or proceeding commenced by the trustee or trustees named in said grant or their successors, privies or persons holding under them, which defense involves the legality of said grant, or affects the title to the property thereby conveyed, or the right to the possession or the issues and profits thereof, unless such defense is made in a suit, action or proceeding commenced within two years after such grant shall have been filed for record.

§ 15. Personal property not alienable in certain cases.

1. The right of the beneficiary to enforce the performance of a trust to receive the income of personal property, and to apply it to the use of any person, cannot be transferred by assignment or otherwise. But the right and interest of the beneficiary of any other trust in personal property may be transferred. Provided, however, that when the proceeds of a life insurance policy, becoming a claim by death of the insured, are left with the insurance company under a trust or other agreement, the benefits accruing thereunder after the death of the insured shall not be transferable, nor subject to commutation or incumbrance, nor to legal process except in an action to recover for necessities, if the parties to the trust or other agreement so agree. (Amended by L. 1911, ch. 327, in effect June 14, 1911.)

§ 16. Validity of directions for accumulation of income.

An accumulation of the income of personal property, directed by any instrument sufficient in law to pass such property is valid:

1. If directed to commence from the date of the instrument, or the death of the person executing the same, and to be made for the benefit of one or more minors, then in being, or in being at such death, and to terminate at or before the expiration of their minority.

2. If directed to commence at any period subsequent to the date of the instrument or subsequent to the death of the person executing it, and directed to commence within the time allowed for the suspension of the absolute ownership of personal property, and at some time during the minority of the persons for whose benefit it is intended, and to terminate at or before the expiration of their minority.

3. All other directions for the accumulation of the income of personal property, not authorized by statute, are void. In either case mentioned in subdivisions one and two of this section a direction for any such accumulation for a longer term than the minority of the persons intended to be benefited thereby, has the same effect as if limited to the minority of such persons, and is void as respects the time beyond such minority.

Provided that, the income arising from any personal property granted or conveyed, or bequeathed, in trust to any incorporated college or other incorporated literary institution, for any of the purposes specified in section thirteen of this chapter, or for the purpose of providing for the maintenance of any teacher in a grammar school or institute, may be permitted to accumulate until the same shall amount to a sum sufficient, in the opinion of the regents of the university, to carry into effect any of the charitable uses and trusts mentioned in either section thirteen of this chapter or in this paragraph of this section.

Provided, if any of the principal of any trust fund actually received by any incorporated college, or other incorporated literary institution, or by the corporation of any city or village, or by the commissioners of common schools of any town, or by the trustees of any school district, under any grant, conveyance, or bequest, for any of the purposes for which trusts

are authorized under section thirteen of this chapter, shall subsequently become diminished from any cause, such diminution may be made up by the accumulation of the interest or income of the principal of such trust fund, in accordance with the directions, if any, contained in the grant, conveyance, or bequest of such trust fund; and if no directions for that purpose are contained in such grant, conveyance, or bequest, then such diminution may be made up in whole or in part by such accumulation, in the discretion of the trustees of such trust fund; but in no case shall such accumulation be allowed to increase the trust fund beyond the true amount or value thereof, actually received by the trustees, to be estimated after the deduction of all liens and incumbrances on such trust fund, and of all expenses incurred or paid by the trustees in the collection or obtaining the possession of the same.

Provided, further, that where a gift, grant, devise or bequest of real and personal property, or of personal property alone, is made in trust by the owner thereof to a religious, education, charitable or benevolent corporation, for any of the purposes specified or comprehended in its charter, not more than one-fourth of the total value of such gift, grant, devise or bequest of real and personal property, or of personal property alone, not exceeding in value the sum of fifty thousand dollars, may be set apart for the accumulation of the rents and profits, and income, of such property, for the benefit of such corporation, until such time as such accumulation shall amount to the sum of one hundred thousand dollars, whereupon such accumulation shall be available for the use of such corporation, as a part of the permanent endowment fund thereof, or otherwise as provided in the conditions of the gift, grant, devise or bequest to such corporation. Last paragraph added by L. 1915, ch. 670. In effect May 22, 1915.

PUBLIC BUILDINGS LAW.

(Chapter 47 of the Consolidated Laws.)

§ 140. Fire protection of public buildings.

It shall be the duty of each superintendent or chief executive officer of each of the public institutions of the state, supported wholly or partly by the funds of the state, to provide that the following regulations for the protection of the inmates of said buildings and the buildings be complied with: There shall be provided a sufficient number of stand-pipes, with connections or outlets on each floor, to which a length of fire hose shall be attached, to properly protect the entire floor surface. All fire hose must be tested at least once in three months under the direction of the engineer, and employees must be trained in its use. Not less than six portable fire-extinguishers for each floor of each building, hand grenades and fire-pails kept constantly filled with water and used for no other purpose shall be provided. Bathtubs shall be kept filled with water during the night and pails ready for use placed near them. Suitable steps must be provided under windows used as exits to fire-escapes and all fire-escapes must be properly inclosed with wire netting. Wards of the state, if physically and mentally able, must be required to occasionally go up and down the outside iron stairways, which must be provided, in order to become accustomed to their use. If gas is used, the pressure shall be regulated by governor that the flow may be as nearly uniform as possible. All swinging gas jets in closets, clothes-rooms, employees' rooms and in rooms occupied by wards of the state must be protected by wire screens. Gas stoves must be used only when absolutely necessary, and if used must be suitably inclosed with metal. Kerosene oil must not be used for lighting purposes unless the institution is not fully provided with gas or electric lights; and if such oil is used it must be of the highest fire test commercially obtainable. Candles must be used only in an emergency, and on the express authorization of the superintendent or chief executive officer. None but safety matches, or those which can be used only on a specially prepared surface, must be allowed in or about the institution, and, so far as possible, matches should be dispensed with and electric-torches be supplied. All lanterns must be kept outside the buildings used for sleeping purposes, in charge of one person, who must regularly clean, replenish and distribute them. Painters' supplies and inflam-

mable liquids of all kinds must not be stored in buildings occupied by wards of the state or employees. When oil or other inflammable substance is applied to floors, it must be applied only by persons skilled in its application, and all articles used in applying such inflammable material must be carefully destroyed after use. All attics and basements must be constantly kept free from rubbish or articles not necessary to the proper conduct of the institution, and must be regularly swept, cleaned and all broken or needless articles promptly removed.

The moneys necessary to carry out the provisions of this section shall be supplied from the moneys annually appropriated for the maintenance of the above described institutions.

Section 80 renumbered § 140 by L. 1918, ch. 198.

§ 141. Display of foreign flags on public buildings.

It shall not be lawful to display the flag or emblem of any foreign country upon any state, county or municipal building; provided, however, that whenever any foreigner shall become the guest of the United States, the state or any city, upon public proclamation by the governor or mayor of such city, the flag of the country of which such public guest shall be a citizen may be displayed upon such public buildings.

Section 81 renumbered § 141 by L. 1918, ch. 198.

PUBLIC SERVICE COMMISSIONS LAW.

(Chapter 48 of the Consolidated Laws.)

L. 1910, Ch. 480.

[By section of this chapter, the term "municipality," when used in this act, includes a city, village, town or lighting district, organized as provided by a general or special act.]

Provisions Relating to Gas Corporations and Electrical Corporations; regulation of Price of Gas and Electricity.

Section 64. Application of article.

65. Safe and adequate service; just and reasonable charges; unjust discrimination; unreasonable preference.
66. General powers of commissions in respect to gas and electricity.
67. Inspection of gas and electric meters.
68. Approval of incorporation and franchises; certificate.
69. Approval of issue of stock, bonds and other forms of indebtedness.
- 69a. Reorganizations.
70. Approval of transfer of franchise.
71. Complaints as to quality and price of gas and electricity; investigation by commission; forms of complaints.
72. Notice and hearing; order fixing price of gas or electricity, or requiring improvements.
73. Forfeiture for noncompliance with order.
74. Summary proceedings.
75. Defense in case of excessive charge for gas or electricity.
76. Jurisdiction.
77. Powers of local officers.

§ 64. Application of article.

This article shall apply to the manufacture and furnishing of gas for light, heat or power and the furnishing of natural gas for light, heat or power, and the generation, furnishing and transmission of electricity for light, heat or power.

§ 65. Safe and adequate service; just and reasonable charges; unjust discrimination; unreasonable preference.

1. Every gas corporation, every electrical corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such gas corporation, electrical corporation or municipality for gas, electricity or any service rendered or to be rendered, shall be just and reasonable and not more than allowed by law or by order of the commission having jurisdiction. Every unjust or unreasonable charge made or demanded for gas, electricity or any such service, or in connection therewith, or in excess of that allowed by law or by the order of the commission is prohibited.

2. No gas corporation, electrical corporation or municipality shall directly or indirectly, by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas or electricity or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

3. No gas corporation, electrical corporation or municipality shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

4. Nothing in this chapter shall be taken to prohibit a gas corporation or electrical corporation from establishing a sliding scale for a fixed period for the automatic adjustment of charges for gas, electricity or any service rendered or to be rendered and the dividends to be paid to stockholders of such gas corporation or electrical corporation, provided that the sliding scale shall first have been filed with and approved by the proper commission; but nothing in this subdivision shall operate to prevent the commission after the expiration of such fixed period from fixing proper, just and reasonable rates and charges to be made for service as authorized in this article.

§ 66. General powers of commissions in respect to gas and electricity.

Each commission shall within its jurisdiction:

1. Have general supervision of all gas corporations and electrical corporations having authority under any general or special law or under any charter or franchise to lay down, erect or maintain wires, pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality, for the purpose of furnishing or distributing gas or of furnishing or transmitting electricity for light, heat or power, or

maintaining underground conduits or ducts for electrical conductors, and all gas plants and electric plants owned, leased or operated by any gas corporation or electrical corporation.

2. Investigate and ascertain, from time to time, the quality of gas supplied by persons, corporations and municipalities; examine or investigate the methods employed by such persons, corporations and municipalities in manufacturing, distributing and supplying gas or electricity for light, heat or power and in transmitting the same, and have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such gas or electricity and those employed in the manufacture and distribution thereof, and have power to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electrical corporations and municipalities.

3. Have power by order to fix from time to time standards for the measurement of the purity of gas and for the measurement of the illuminating power of gas and for the measurement of the heating power of gas to be manufactured, distributed or sold by persons, corporations or municipalities for lighting, heating or power purposes, notwithstanding that another standard for the measurement of any thereof may have been fixed by statute, and to prescribe from time to time the efficiency of the electric supply system, of the current supplied and of the lamps furnished by the persons, corporations or municipalities generating and selling electric current, and by order to require the gas so manufactured, distributed or sold to equal the standards so fixed by it, and to prescribe from time to time the reasonable minimum and maximum pressure at which gas shall be delivered by said persons, corporations or municipalities. For the purpose of determining whether the gas manufactured, distributed or sold by such persons, corporations or municipalities for lighting, heating or power purposes conforms to the standards of illuminating power, heating power, purity and pressure, and for the purpose of determining whether the efficiency of the electric supply system, of the current supplied and of the lamps furnished conforms to the orders issued by the commission, the commission shall have power, of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering and supplying gas or electricity, and shall have access through its members or persons employed and authorized by it to make such examinations and investigations to all parts of the manufacturing plants owned, used or operated for the manufacture, transmission or distribution of gas or electricity by any such person, corporation or municipality. Any employee or agent of the commission who divulges any fact or information which may come to his knowledge during the "the course of any such inspection or examination, except in so far as he may be directed by the commission, or by a court or judge thereof, or authorized by law, shall be guilty of a misdemeanor.

Amended by L. 1913, ch. 504. In effect May 14, 1913.

4. Have power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by gas corporations and electrical corporations and by municipalities engaged in the manufacture, sale and distribution of gas and electricity for light, heat or power. It may also in its discretion prescribe, by order, forms of accounts, records and memoranda to be kept by such persons, corporations and municipalities. Notice of alterations by the commission in the required method or form of keeping a system of accounts shall be given to such persons or corporations by the commission at least six months before the same shall take effect. Any other

*So in original.

and additional forms of accounts, records and memoranda kept by such corporation shall be subject to examination by the commission.

5. Examine all persons, corporations and municipalities under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such person, corporation or municipality are unjust, unreasonable, unjustly discriminatory or unduly preferential or in anywise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed; and whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the property, equipment or appliances of any such person, corporation or municipality are unsafe, inefficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

6. Require every person and corporation under its supervision and it shall be the duty of every such person and corporation to file with the commission an annual report, verified by the oath of the president, treasurer, general manager or receiver, if any, thereof. The verification shall be made by said official holding office at the time of the filing of said report, and if not made upon the knowledge of the person verifying the same shall set forth the sources of his information and the grounds of his belief as to any matters not stated to be verified upon his knowledge. The report shall show in detail (a) the amount of its authorized capital stock and the amount thereof issued and outstanding; (b) the amount of its authorized bonded indebtedness and the amount of its bonds and other forms of evidence of indebtedness issued and outstanding; (c) its receipts and expenditures during the preceding year; (d) the amount paid as dividends upon its stock and as interest upon its bonds; (e) the names of its officers and the aggregate amount paid as salaries to them and the amount paid as wages to its employees; (f) the location of its plant or plants and system, with a full description of its property and franchises, stating in detail how each franchise stated to be owned was acquired; and (g) such other facts pertaining to the operation and maintenance of the plant and system, and the affairs of such person or corporation as may be required by the commission. Such reports shall be in the form, cover the period and be filed at the time prescribed by the commission. The commission may, from time to time, make changes and additions in such forms. When any such report is defective or believed to be erroneous, the commission shall notify the person, corporation or municipality making such report to amend the same within a time prescribed by the commission. Any such person or corporation or municipality which shall neglect to make any such report or which shall fail to correct any such report within the time prescribed by the commission shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it

shall neglect to file or correct the same, to be sued for in the name of the people of the state of New York. The amount recovered in any such action shall be paid into the state treasury and be credited to the general fund. The commission may extend the time prescribed for cause shown.

7. Require each municipality engaged in operating any works or systems for the manufacture and supplying of gas or electricity to make an annual report to the commission, verified by the oath of the general manager or superintendent thereof, showing in detail, (a) the amount of its authorized bonded indebtedness and the amount of its bonds and other forms of evidence of indebtedness issued and outstanding for lighting purposes; (b) its receipts and expenditures during the preceding year; (c) the amount paid as interest upon its bonds and upon other forms of evidence of indebtedness; (d) the name of and the amount paid to each person receiving a yearly or monthly salary, and the amount paid as wages to employees; (e) the location of its plant and system with a full description of the property; and (f) such other facts pertaining to the operation and maintenance of the plant and system as may be required by the commission. Such report shall be in the form, cover the period and be filed at the time prescribed by the commission.

8. Have power, either through its members or inspectors or employees duly authorized by it, to enter in or upon and to inspect the property, buildings, plants, factories, power houses, ducts, conduits and offices of any such corporations, persons or municipalities.

9. Have power to examine the accounts, books, contracts, records, documents and papers of any such corporation, person or municipality, and have power, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.

10. Have power to compel, by subpoena duces tecum, the production of any accounts, books, contracts, records, documents, memoranda and papers. In lieu of requiring production of originals by subpoena duces tecum the commission or any commissioner may require sworn copies of any such books, records, contracts, documents and papers, or parts thereof, to be filed with it. The commission may require of all such corporations, persons or municipalities, specific answers to questions upon which the commission may need information, and may also require such corporations, persons or municipalities to file periodic reports in the form, covering the period and filed at the time prescribed by the commission. If such corporation, person or municipality shall fail to make specific answer to any question or shall fail to make a periodic report when required by the commission as herein provided within the time and in the form prescribed by the commission for the making and filing of any such report or answer, such corporation, person or the officer of the municipality shall forfeit to the state the sum of one hundred dollars for each and every day it shall continue to be in default with respect to such report or answer. Such forfeiture shall be recovered in an action brought by the commission in the name of the people of the state of New York. The amount recovered in any such action shall be paid into the state treasury and be credited to the general fund.

11. Have power in all parts of the state, either as a commission or through its members, to subpoena witnesses, take testimony and administer oaths to witnesses in any proceeding or examination instituted before it, or con-

ducted by it in reference to any matter within its jurisdiction under this article.

12. Have power to require every gas corporation, electrical corporation and municipality to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such gas corporation, electrical corporation or municipality; but this subdivision shall not apply to state, municipal or federal contracts. Unless the commission otherwise orders, no change shall be made in any rate or charge, or in any form of contract or agreement or any rule or regulation relating to any rate, charge or service, or in any general privilege or facility, which shall have been filed and published by a gas corporation, an electrical corporation or municipality in compliance with an order of the commission, except after thirty days' notice to the commission and publication for thirty days as required by order of the commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect. The commission for good cause shown may allow changes without requiring the thirty days' notice under such conditions as it may prescribe. No corporation or municipality shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation or municipality refund or remit in any manner or by any device any portion of the rates or charges so specified, nor extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances. The commission shall have power to prescribe the form of every such schedule, and from time to time prescribe by order such changes in the form thereof as may be deemed wise. The commission shall also have power to establish such rules and regulations to carry into effect the provisions of this subdivision as it may deem necessary, and to modify or amend such rules or regulations from time to time.

13. In case any electrical corporation or gas corporation is engaged in carrying on any business other than owning, operating or managing a gas plant or an electric plant, which other business is not otherwise subject to the jurisdiction of the commission, and is so conducted that its operations are to be substantially kept separate and apart from the owning, operating, managing or controlling of such gas plant or electric plant, said corporation in respect of such other business shall not be subject to any of the provisions of this chapter and shall not be required to procure the assent or authorization of the commission to any act in such other business or to make any report in respect thereof. But this subdivision shall not restrict or limit the powers of the commission in respect to the owning, operating, managing or controlling by such corporation of such gas plant or electric plant, and said powers shall include also the right to inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the ownership, operation, management or control of such gas plant or electric plant as distinguished from such

other business. In any such case if the owning, operating, managing or controlling of such gas plant or electric plant by any such corporation is wholly subsidiary and incidental to the other business carried on by it and is inconsiderable in amount and not general in its character, the commission may by general rules exempt such corporation from making full reports and from the keeping of accounts as to such subsidiary and incidental business.

§ 67. Inspection of gas and electric meters.

1. Each commission shall appoint inspectors of gas meters whose duty it shall be when required by the commission to inspect, examine, prove and ascertain the accuracy of any and all gas meters used or intended to be used for measuring or ascertaining the quantity of gas for light, heat or power furnished by any person, corporation or municipality to or for the use of any person or persons and when found to be or made to be correct, the inspector shall seal all such meters and each of them with some suitable device, which device shall be recorded in the office of the secretary of state.

2. No corporation, person or municipality shall furnish, set or put in use any gas meter which shall not have been inspected, proved and sealed by an inspector of the commission.

3. Each commission shall appoint inspectors of electric meters whose duty it shall be, when required by the commission, to inspect, examine and ascertain the accuracy of any and all electric meters used or intended to be used for measuring and ascertaining the quantity of electric current furnished for light, heat or power by any person, corporation or municipality to or for the use of any person or corporation, and to inspect, examine and ascertain the accuracy of all apparatus for testing and proving the accuracy of electric meters, and when found to be or made to be correct the inspector shall stamp or mark all such meters and apparatus with some suitable device, which device shall be recorded in the office of the secretary of state. No corporation, person or municipality shall furnish, set or put in use any electric meter the type of which shall not have been approved by the commission.

4. Every gas corporation, electrical corporation and municipality shall provide, repair and maintain such suitable premises and apparatus and facilities as may be required and approved by the commission for testing and proving the accuracy of gas and electric meters furnished for use by it, and by which apparatus every meter may be tested.

5. If any consumer to whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested; if the same on being so tested shall be found to be more than four per centum if an electric meter, or more than two per centum if a gas meter, defective or incorrect to the prejudice of the consumer, the expense of such inspection and test shall be borne by the corporation or municipality, if the same on being so tested shall be found to be correct within the limits of error prescribed by the provisions of this subdivision, the expense of such inspection and test shall be borne by the consumer.

6. The commission shall prescribe such rules and regulations to carry into effect the provisions of this section as it may deem necessary, and shall fix uniform reasonable charges for the inspection and testing of meters upon complaint.

§ 68. Approval of incorporation and franchises; certificate.

No gas corporation or electrical corporation shall begin construction of a gas plant or electric plant without first having obtained the permission and approval of the commission of each district within which any part of the work of construction is to be performed. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under and franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the proper commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities. The commission within whose district such construction is to be made, or within whose district such right, privilege or franchise is to be exercised, shall have power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service.

No municipality shall build, maintain and operate for other than municipal purposes any works or systems for the manufacture and supplying of gas or electricity for lighting purposes without a certificate of authority granted by the commission. If the certificate of authority is refused, no further proceedings shall be taken by such municipality before the commission, but a new application may be made therefor after one year from the date of such refusal.

§ 69. Approval of issues of stock, bonds and other forms of indebtedness.

A gas corporation or electrical corporation organized or existing, or hereafter incorporated, under or by virtue of the laws of the state of New York, may issue stocks, bonds, notes or other evidence of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of its plant or distributing system, or for the improvement or maintenance of its service or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income, or from any other moneys in the treasury of the corporation not secured or obtained from the issue of stocks, bonds, notes or other evidence of indebtedness of such corporation, within five years next prior to the filing of an application with the proper commission for the required authorization, for any of the aforesaid purposes except maintenance of service and except replacements in cases where the applicant shall have kept its accounts and vouchers of such expenditure in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which such expenditure was made; provided and not otherwise that there shall have been secured from the proper commission an order authorizing such issue, and the amount thereof, and stating the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property or labor to be procured or paid for by the issue of such stock, bonds, notes or other evidence of indebtedness is or

has been reasonably required for the purposes specified in the order, and that except as otherwise permitted in the order in the case of bonds, notes and other evidence of indebtedness, such purposes are not in whole or in part reasonably chargeable to operating expenses or to income. Nothing herein contained shall prohibit the commission from giving its consent to the issue of bonds, notes or other evidence of indebtedness for the reimbursement of moneys heretofore actually expended from the income for any of the aforesaid purposes, except maintenance of service and replacements, prior to five years next preceding the filing of an application therefor, if in the judgment of the commission such consent should be granted; provided application for such consent shall be made prior to January first, nineteen hundred and twelve. For the purpose of enabling it to determine whether it should issue such an order, the commission shall make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents or contracts as it may deem of importance in enabling it to reach a determination. Such corporation shall not without the consent of the commission apply said issue or any proceeds thereof to any purpose not specified in such order. Such gas corporation or electrical corporation may issue notes, for proper corporate purposes and not in violation of any provision of this or of any other act, payable at periods of not more than twelve months without such consent; but no such notes shall, in whole or in part, directly or indirectly be refunded by any issue of stock or bonds or by evidence of indebtedness running for more than twelve months without the consent of the proper commission. Provided, however, that the commission shall have no power to authorize the capitalization of any franchise to be a corporation or to authorize the capitalization of any franchise or the right to own, operate or enjoy any franchise whatsoever in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to any political subdivision thereof as the consideration for the grant of such franchise or right. Nor shall the capital stock of a corporation formed by the merger or consolidation of two or more other corporations, exceed the sum of the capital stock of the corporations, so consolidated, at the par value thereof, or such sum and any additional sum actually paid in cash; nor shall any contract for consolidation or lease be capitalized in the stock of any corporation whatever; nor shall any corporation hereafter issue any bonds against or as a lien upon any contract for consolidation or merger.

§ 69a. Reorganizations.

1. Reorganizations of gas corporations and electrical corporations pursuant to sections nine and ten of the stock corporation law and such other statutes as may be enacted from time to time shall be subject to the supervision and control of the proper commission, and no such reorganization shall be had without the authorization *of such commission.

2. Upon all such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as is authorized by the commission, which, in making its determination shall not exceed the fair value of the property involved, taking into consideration its original cost of construction, duplication cost, present condition, earning power at reasonable rates and all other relevant matters and any additional sum or sums as shall be actually paid in cash, provided, however, that the commission may make due allowance for discount of bonds. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the commission.

Added by L. 1912, ch. 289. In effect Apr. 12, 1912.

§ 70. Approval of transfer of franchise.

No gas corporation or electrical corporation shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the proper commission. The permission and approval of the commission, to the exercise of a franchise under sixty-eight of this chapter, or to the assignment, transfer or lease of a franchise under this section shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges

*So in original.

contained in the grant of any franchise or to waive any forfeiture. No such corporation shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business, or proposing to operate or operating under a franchise from the same or any other municipality, neither shall any street railroad corporation acquire the stock or bonds of any electrical corporation, unless authorized so to do by the commission. Save where stock shall be transferred or held for the purpose of collateral security only with the consent of the commission empowered by this chapter to give such consent, no stock corporation of any description, domestic or foreign, other than a gas corporation or electrical corporation or street railroad corporation, shall purchase or acquire, take or hold, more than ten per centum of the total capital stock issued by any gas corporation or electrical corporation organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the capital stock of any gas corporation or electrical corporation may with the consent of the commission acquire and hold the remainder of the capital stock of such gas corporation or electrical corporation or any portion thereof. Provided, that with the consent of such commission and upon and subject to such terms and conditions as such commission may fix and impose, any such stock corporation may acquire, take and hold more than ten per centum of the stock of any gas corporation or electrical corporation, organized or existing under or by virtue of the laws of this state, provided such gas corporation or electrical corporation is operated wholly outside of the territory embraced within the first public service commission district. Nothing herein contained shall be construed to prevent the holding of stock heretofore lawfully acquired, or to prevent, upon the surrender or exchange of said stock pursuant to a reorganization plan, the purchase, acquisition, taking or holding of a proportionate amount of stock of any new corporation organized to take over, at foreclosure or other sale, the property of any corporation whose stock has been thus surrendered or exchanged. Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation, in violation of any provision of this chapter shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such gas corporation, or electrical corporation, or shall be recognized as effective for any purpose.

Amended by L. 1911, ch. 788, and L. 1918, ch. 420, in effect May 1, 1918.

§ 71. Complaints as to quality and price of gas and electricity; investigation by commission; forms of complaints.

Upon the complaint in writing of the mayor of a city, the trustees of a village or the town board of a town in which a person or corporation is authorized to manufacture, sell or supply gas or electricity for heat, light or power, or upon the complaint in writing of not less than one hundred customers or purchasers of such gas or electricity in cities of the first or second class, or of not less than fifty in cities of the third class, or of not less than twenty-five elsewhere, or upon complaint of a gas corporation or electrical corporation supplying said gas or electricity, as to the illuminating power, purity, pressure or price of gas, the efficiency of the electric incandescent lamp supply, the voltage of the current supplied for light, heat or power, or price of electricity sold and delivered in such municipality, the proper commission shall investigate as to the cause for such complaint. When such complaint is made, the commission may, by its agents, examiners and inspectors, inspect the works, system, plant, devices, appliances and methods used by such person or corporation in manufacturing, transmitting and supplying such gas or electricity, and may examine or cause to be examined the books and papers of such person or corporation pertaining to the manufacture, sale, transmitting and supplying of such gas or electricity. The form and contents of complaints made as provided in this section shall be prescribed by the commission. Such complaints shall be signed by the officers, or by the customers, purchasers or subscribers making them, who must add to their signatures their places of residence, by street and number, if any.

§ 72. Notice and hearing; order fixing price of gas or electricity, or requiring improvement.

Before proceeding under a complaint presented as provided in section seventy-one, the commission shall cause notice of such complaint, and the purpose thereof, to be served upon the person or corporation affected thereby. Such person or corporation shall have an opportunity to be heard in respect to the matters complained of at a time and place to be specified in such notice. An investigation may be instituted by the commission as to any matter of which complaint may be made, as provided in section seventy-one of this chapter, or to enable it to ascertain the facts requisite to the exercise of any power conferred upon it. After a hearing and after such an investigation as shall have been made by the commission or its officers, agents, examiners or inspectors, the commission within lawful limits may, by order, fix the maximum price of gas or electricity not exceeding that fixed by statute to be charged by such corporation or person, for the service to be furnished; and may order such improvement in the manufacture, distribution or supply of gas, in the manufacture, transmission or supply of electricity, or in the methods employed by such person or corporation, as will in its judgment be adequate, just and reasonable. The price fixed by the commission under this section or under subdivision five of section sixty-six shall be the maximum price to be charged by such person, corporation or municipality for gas or electricity for the service to be furnished within the territory and for a period to be fixed by the commission in the order, not exceeding three years except in the case of a sliding scale, and thereafter until the commission shall, upon its own motion or upon the complaint of any corporation, person or municipality interested, fix a higher or lower maximum price of gas or electricity to be thereafter charged. In determining the price to be charged for gas or electricity the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard among other things to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies.

§ 73. Forfeiture for noncompliance with order.

Every gas corporation and electrical corporation and the officers, agents and employees thereof shall obey, observe and comply with every order made by the commission under authority of this chapter so long as the same shall be and remain in force. Any such person or corporation, or any officer, agent or employee thereof, who knowingly fails or neglects to obey or comply with such order, or any provision of this chapter, shall forfeit to the state of New York not to exceed the sum of one thousand dollars for each offense. Every distinct violation of any such order or of this chapter shall be a separate and distinct offense, and in case of a continuing violation each day shall be deemed a separate and distinct offense.

§ 74. Summary proceedings.

Whenever either commission shall be of opinion that a gas corporation, electrical corporation or municipality within its jurisdiction is failing or omitting or about to fail or omit to do anything required of it by law or

In case of the construction of a state or county highway which deviates from the line of an existing highway across a steam surface railroad, a like notice shall be given to such railroad company by the state commission of highways at least fifteen days prior to the adoption of the maps, plans and specifications for such state or county highway by such commission. Such notice shall designate the time when and place where a hearing will be given to such railroad company, and such railroad company shall have the right to be heard before the authorities of such municipal corporation upon the question of the necessity of such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road or before the state commission of highways in case of a state or county highway, on the question of the location of such highway. If the municipal corporation determines such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road to be necessary, or if the state commission of highways determines that such state or county highway which deviates from the line of an existing highway shall be constructed across such railroad at the place indicated in the maps, plans and specifications therefor, such municipal corporation or commission of highways shall then apply to the public service commission before any further proceedings are taken, to determine whether such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall pass over or under such railroad or at grade. The public service commission shall thereupon appoint a time and place for hearing such application, and shall give such notice thereof as it shall judge reasonable, not however less than ten days, to the railroad company whose railroad is to be crossed by such new street, avenue, highway or road, or new portion or additional width of a street, avenue, highway or road, to the state commission of highways, or in the case of a state or county highway which deviates from the line of an existing highway, to the municipal corporation and to the owners of land adjoining the railroad and that part of the street, avenue, highway or road to be opened, extended or constructed. The public service commission shall determine whether such street, avenue, highway or road, or new portion or additional width of a street, avenue, highway or road, or state or county highway shall be constructed over or under such railroad or at grade. If said commission determine that such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall be carried across such railroad above grade, then said commission shall determine the height, the length and the material of the bridge or structure by means of which such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall be carried across such railroad, and the length, character and grades of the approaches thereto. If said commission shall determine that such street, avenue, highway or road shall be constructed or extended below the grade, said commission shall determine the manner and method in which the same shall be so carried under, and the grade or grades thereof, and if said commission shall determine that said street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall be constructed or extended at grade, said commission shall determine the manner and method in which the same shall be carried over said railroad at grade and what safe-

guards shall be maintained. The decision of the commission as to the manner and method of carrying such new street, avenue, highway or road, or new portion or additional width of a street, avenue, highway or road, or state or county highway which deviates from the line of an existing highway, across such railroad shall be final, subject however to the right of appeal hereinafter given. The decision of said commission rendered in any proceeding under this section shall be communicated within twenty days after final hearing to all parties to whom notice of the hearing in such proceeding was given, or who appeared at such hearing by counsel or in person.

Amended by L. 1913, ch. 744; L. 1914, ch. 431, in effect Apr. 16, 1914.

§ 91. Petition for alteration of existing crossing.

The mayor and common council of any city, the president and trustees of any village, the town board of any town, the board of supervisors of any county within which a street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road crosses or is crossed by a steam surface railroad at grade, below or above grade by structures heretofore constructed, or any steam surface railroad company, whose road crosses or is crossed by a street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road at grade, below or above grade, may bring their petition in writing to the public service commission, therein alleging that public safety requires an alteration in the manner of such crossing, its approaches, the method of crossing, the location of the crossing, a change in the existing structure by which such crossing is made, the closing and discontinuance of a crossing and the diversion of the travel thereon to another street, avenue, highway, road or crossing, or if not practicable to change such crossing from grade, below or above grade or to close or discontinue the same, the opening of an additional crossing for the partial diversion of travel from the grade below or above grade crossing, and praying that the same may be ordered. Where a street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road in a city, village, town or county, which crosses or is crossed by a steam surface railroad at grade below or above grade, is a part of a highway which the state commission of highways shall have determined to construct or improve as a state or county highway, as provided in article six of the highway law, such commission of highways may bring a petition containing any of the allegations above specified and praying for a like order. Upon any such petition being brought the public service commission shall appoint a time and place for hearing the petition, and shall give such personal notice thereof as it shall judge reasonable, of not less than ten days, however, to such petitioner, the railroad company, the municipality in which such crossing is situated, and if such crossing is in whole or part in an incorporated village having not to exceed twelve hundred inhabitants, also to the supervisor or supervisors of the town or towns in which such crossing is situated; and in all cases to the owners of the lands adjoining such crossing and adjoining that part of the street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road to be changed in grade or location, or the land to be opened for a new crossing, and to the state commission of highways in case of a state

or county highway. The public service commission shall cause notice of said hearing to be advertised in at least two newspapers published in the locality affected by the application. Upon such notice and after a hearing the public service commission shall determine what alterations or changes, if any, shall be made. If the application be made by the state commission of highways in respect to a street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road proposed to be constructed or improved as a part of a state highway, the decision shall state whether such highway shall cross such railroad above or below the grade of the highway; in case of a county highway, such decision shall state whether such highway shall cross such railroad at grade, or above or below the grade of the highway. The decision of said public service commission rendered in any proceeding under this section shall be communicated within twenty days after final hearing to all parties to whom notice of the hearing in said proceeding was given, or who appeared at said hearing by counsel or in person. Any person aggrieved by such decision, or by a decision made pursuant to sections eighty-nine and ninety hereof, and who was a party to said proceeding, may within sixty days appeal therefrom to the appellate division of the supreme court in the department in which such grade crossing is situated, and to the court of appeals, in the same manner and with like effect as is provided in the case of appeals from an order of the supreme court.

Amended by L. 1911, ch. 141; L. 1913, chs. 354, 744; L. 1914, ch. 431, in effect Apr. 16, 1914.

§ 92. Acquisition of land, right or easement in crossing.

The municipal corporation having jurisdiction over the street, avenue, highway or road and in which the crossing is located, or the state commission of highways in case of a street, avenue, highway or road to be constructed or improved as a part of a state or county highway, may with the approval of the railroad company acquire by purchase any lands, rights or easements necessary or required for the purpose of carrying out the provisions of sections eighty-nine, ninety and ninety-one of this chapter, but if unable to do so shall acquire such lands, rights or easements by condemnation either under the condemnation law or under the provisions of the charter of such municipal corporation. The railroad company shall have notice of any such proceedings and the right to be heard therein.

Amended by L. 1913, ch. 744. In effect May 26, 1913.

§ 93. Repair of bridges and subways at crossings.

When a highway crosses a railroad by an overhead bridge, the framework of the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the roadway thereover and the approaches thereto shall be maintained and kept in repair by the municipality having jurisdiction over and in which the same are situated; except that in the case of any overhead bridge constructed prior to the first day of July, eighteen hundred and ninety-seven, the roadway over and the approaches to which the railroad company was under obligation to maintain and repair, such obligation shall continue, provided the railroad company shall have at least ten

days' notice of any defect in the roadway thereover and the approaches thereto, which notice must be given in writing by the town superintendent of highways or other duly constituted authority, and the railroad company shall not be liable by reason of any such defect unless it shall have failed to make repairs within ten days after the service of such notice upon it. When a highway passes under a railroad, the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the subway and its approaches shall be maintained and kept in repair by the municipality having jurisdiction over and in which the same are situated. In case such highway is a part of a state or county highway constructed or improved as provided in article six of the highway law, the roadway over such railroad or the subway underneath the same, and the approaches thereto, shall be maintained and kept in repair under the supervision and control of the state commission of highways in the manner provided by the highway law for the maintenance and repair of state and county highways.

Amended by L. 1913, ch. 744. In effect May 26, 1913.

§ 94. Expense of constructing new crossings.

1. Whenever under the provisions of section eighty-nine of this chapter, a new railroad is constructed across an existing highway, the expense of crossing above or below the grade of the highway including any expense incurred in altering or changing the highway under a determination of the public service commission shall be paid entirely by the railroad corporation.

2. Whenever under the provisions of section ninety of this chapter a new street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road is constructed across an existing railroad, the railroad corporation shall pay one-half and the municipal corporation having jurisdiction over such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall pay the remaining one-half of the expense of making such crossing above or below the grade of the railroad.

3. Whenever a change is made as to an existing crossing or structure in accordance with the provisions of section ninety-one of this chapter, fifty per centum of the expense thereof shall be borne by the railroad corporation, twenty-five per centum by the municipal corporation and twenty-five per centum by the state; except that whenever an existing crossing, in which a change is made under the provisions of section ninety-one, is located wholly or partly within an incorporated village having not to exceed twelve hundred inhabitants, the portion of expense herein required to be borne by the municipal corporation shall be borne by the town or towns in which such crossing is situated.

4. Whenever under the provisions of sections ninety and ninety-one of this chapter a highway is constructed across an existing railroad and is a part of a state or county highway constructed or improved as provided in the highway law, one-half of the expense of making such crossing above or below grade or changing or rebuilding the existing structure by which such crossing is made, shall be paid by the railroad corporation, and the remaining one-half of such expense shall be paid by the state in the case of a state highway, and jointly

by the state, county and town in the case of a county highway, in the same proportion and in the same manner as the cost of construction or improvement of such state or county highway is paid.

5. Whenever in carrying out the provisions of sections ninety or ninety-one of this chapter two or more lines of steam surface railroad, owned and operated by different corporations, cross a highway at a point where a change in grade is made, each corporation shall pay such proportion of fifty per centum of the expense thereof as shall be determined by the public service commission.

6. In carrying out the provisions of sections eighty-nine, ninety and ninety-one of this chapter the work shall be done by the railroad corporation or corporations affected thereby, subject to the supervision and approval of the public service commission; and in all cases, except where the entire expense is paid by the railroad corporation, the expense of construction shall be paid primarily by the railroad company, and the expense of acquiring additional lands, rights or easements shall be paid primarily by the municipal corporation having jurisdiction over the street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road or, in case of a state or county highway, upon the order of the state commission of highways out of moneys available therefor. Plans and specifications of all changes proposed under sections ninety and ninety-one of this chapter and an estimate of the expense thereof shall be submitted to the public service commission for its approval before the letting of any contract. If such changes are proposed in a highway which is to be constructed or improved as a state or county highway, such plans and specifications shall also be submitted to the state commission of highways for its approval before the letting of any contract. In case the work is done by contract the proposals of contractors shall be submitted to the public service commission, and if the commission shall determine that the bids are excessive it shall have the power to require the submission of new proposals. The commission may employ temporarily such experts and engineers as may be necessary properly to supervise any work that may be undertaken under sections eighty-nine, ninety and ninety-one of this chapter, the expense thereof to be paid by the comptroller upon the requisition and certificate of the commission and included in the cost of the particular change in grade or in the structure above or below grade on account of which it is incurred and finally apportioned in the manner provided in this section.

7. Upon the completion of the work and its approval by the public service commission an accounting shall be had between the railroad corporation and the municipal corporation or the state commission of highways of the amounts expended by each with interest, and if it shall appear that the railroad corporation or the municipal corporation or the state commission of highways has expended more than its proportion of the expense of the crossing as herein provided a settlement shall be forthwith made in accordance with the provisions of this section. At any time after the work of elimination of a crossing has been commenced the public service commission may, upon its own motion or upon the petition of the railroad company or of any municipality interested or of the state commission of highways, make an order for an intermediate settlement and direct payments to be made in connection therewith as in this section provided for a final accounting. All items of expenditure shall be verified under oath, and in case of a dispute between the railroad cor-

poration and the municipal corporation or the state commission of highways as to the amount expended, any judge of the supreme court in the judicial district in which the municipality or the state or county highway is situated may appoint a referee to take testimony as to the amount expended, and the confirmation of the report of the referee shall be final. In the event of the failure or refusal of the railroad corporation to pay its proportion of the expense, the same with interest from the date of such accounting may be levied and assessed upon the railroad corporation and collected in the same manner that taxes and assessments are now collected by the municipal corporation within which the work is done; and in the event of the failure or refusal of the municipal corporation to pay its proportion of the expense an action may be maintained by the railroad corporation for the collection of the same with interest from the date of such accounting, or the railroad corporation may offset such amount with interest against any taxes levied or assessed against it or its property by such municipal corporation. In the event of the appropriation made by the state in any one year being insufficient to pay the state's proportion of the expense of any change that may be ordered the first payment from the appropriation of the succeeding year shall be on account of said change, and no payment shall be made on account of any subsequent change that may be ordered, nor shall any subsequent change be ordered, until the obligation of the state on account of the first named change in grade has been fully discharged, unless the same shall be provided for by an additional appropriation to be made by the legislature. The state's proportion of the expense of changing any existing grade crossing or the structure of any existing crossing above or below grade shall be paid by the state treasurer on the warrant of the comptroller, to which shall be appended the certificate of the public service commission to the effect that the work has been properly performed and a statement showing the situation of the crossing or structure that has been changed, the total cost and the proportionate expense thereof; and the money shall be paid in whole or in part to the railroad corporation or to the municipal corporation as the public service commission may direct, subject, however, to the rights of the respective parties as they appear from the accounting or intermediate accounting to be had as hereinbefore provided for.

9. No claim for damages to property on account of the change or elimination of any crossing or change in structure under the provisions of this article shall be allowed unless notice of such claim is filed with the public service commission within six months after completion of the work necessary for such change or elimination.

Amended by L. 1911, ch. 141; L. 1913, chs. 354, 425, 744; L. 1914, ch. 431, and L. 1915, ch. 240. In effect April 7, 1915.

§ 95. Proceedings by public service commission for alteration of grade crossings.

The public service commission may, in the absence of any application therefor, when in its opinion public safety requires an alteration in an existing grade crossing or a change in any existing structure above or below grade, institute proceedings on its own motion for an alteration in such grade crossing or structure, upon such notice as it shall deem reasonable, of not less than ten days however, to the railroad company, the municipal corporation and the person or persons interested, and proceedings shall be conducted as provided in section ninety-one of this chapter. The changes in existing grade crossings or structures authorized or required by the commission in any one year shall be so distributed and apportioned over and among the railroads and the municipalities of the state as to produce such equality of burden upon them for their proportionate part of the expenses as herein provided for as the nature and circumstances of the cases before it will permit.

Amended by L. 1913, ch. 354. In effect Apr. 24, 1913.

§ 96. Proceedings to enforce orders of commission.

It shall be the duty of the corporation, municipality or person or persons to whom the decisions or orders of the public service commission are directed, as provided in sections eighty-nine, ninety, ninety-one and ninety-five of this chapter, to comply with such decisions and orders, and in case of their failure so to do the commission shall thereupon take proceedings to compel obedience to the decisions and orders of the commission. The supreme court at a special term shall have the power in all cases of such decisions and orders by the public service commission to compel compliance therewith by mandamus, or under the provisions of the public service commissions law, subject to appeal to the appellate division of the supreme court and the court of appeals in the same manner and with like effect as is provided in case of appeals from an order of the supreme court.

Added by L. 1897, ch. 754, sec. 1.

§ 97. Municipal corporation may borrow money.

Whenever in carrying out any of the provisions of sections eighty-nine to ninety-six inclusive of this chapter any municipality shall incur any expense or become liable for the payment of any moneys, it shall be lawful for such municipality temporarily to borrow such money on the notes or certificates of such municipality, and to include the amount of outstanding notes or certificates, or any part thereof, in its next annual tax levy for municipal purposes, or in the discretion of the common council in case of a city, the board of trustees in case of a village, the town board in case of a town or the board of supervisors in the case of a county, to borrow the same, or any part thereof, on the credit of the municipality, and to issue bonds therefor,

which bonds shall be signed by the mayor and clerk in case of a city, the president and clerk in case of a village, the town board in case of a town and the board of supervisors in the case of a county, and shall be in such form and for such sums and be payable at such times and places with interest not exceeding five per centum per annum, as the common council in case of a city, the board of trustees in case of a village, the town board in case of a town and the board of supervisors in the case of a county, shall direct.

Amended by L. 1913, ch. 744; L. 1914, ch. 438, in effect Apr. 23, 1914.

§ 98. Intersections of railroads.

All steam railroads hereafter constructed across the tracks of any other railroad and any street surface railroad hereafter constructed across a steam railroad shall be above, below, or at grade of such existing railroad as the public service commission shall determine, and such commission shall in such determination fix the proportion of expense of such crossing to be paid by each railroad.

As added by L. 1897, ch. 754, sec. 1, and amended by L. 1900, ch. 739, sec. 1.

§ 99. Application of foregoing sections.

The provisions of sections eighty-nine to ninety-eight inclusive of this chapter shall also apply to all steam surface railroads existing on the first day of July, eighteen hundred and ninety-seven, or thereafter on which, after said date, electricity or some other agency than steam shall be substituted as a motive power. None of the provisions of said sections shall apply to crossings in the city of Buffalo under the jurisdiction of the grade crossing commissioners of that city. The terms "municipality" and "municipal corporation" as used in said sections shall include cities, villages, towns and counties.

Amended by L. 1913, ch. 744 and L. 1915, ch. 612. In effect May 12, 1915.

POOR LAW.

(Chapter 42 of the Consolidated Laws.)

§ 52. Burial of poor persons; expense, how paid.

It shall be the duty of the superintendent of the poor of every county and the overseer of the poor of every town, and the person or official having in charge the care of the poor of every city or village, to cause the remains of each deceased poor person to be properly buried. The expense of such burial shall be a state, county, town, city or village charge, as the case may be, and the money therefor shall be raised as other charges of the state, county, town, city or village are raised.

Added by L. 1917, Ch. 512, in effect May 16, 1917.

REAL PROPERTY LAW.

(Chapter 50 of the Consolidated Laws.)

§ 42. Suspension of power of alienation.

The absolute power of alienation is suspended, when there are no persons in being by whom an absolute fee in possession can be conveyed. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation, by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate; except that a contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited, die under the age of twenty-one years, or on any other contingency by which the estate of such persons may be determined before they attain full age. For the purposes of this section, a minority is deemed a part of a life, and not an absolute term equal to the possible duration of such minority.

§ 261. Maintenance of telegraph or other electric wires raises no presumption of grant.

Whenever any wire or cable used for any telegraph, telephone, electric light or other electric purpose, or for the purpose of communication otherwise than by the aid of electricity, is or shall be attached to, or does or shall extend upon or over any building or land, no lapse of time whatever shall raise a presumption of any grant of, or justify a prescription of any perpetual right to, such attachment or extension.

§ 450. Lands used for cemetery purposes not to be sold or mortgaged.

No land actually used and occupied for cemetery purposes shall be sold under execution or for any tax or assessment, nor shall such tax or assessment be levied, collected or imposed, nor shall it be lawful to mortgage such land, or to apply it in payment of debts, so long as it shall continue to be used for such cemetery purposes. Whenever any such land shall cease to be used for cemetery purposes, any judgment, tax or assessment which, but for the provisions of this section would have been levied, collected or imposed, shall thereupon forthwith, together with interest thereon, become and be a lien and charge upon such land, and collectable out of the same.

The provisions of this section shall not apply to any lands held by the city of Rochester.

STATE BOARDS AND COMMISSIONS LAW.

(Repealed by Conservation Law, L. 1911, ch. 647. See Conservation Law, ante.)

CONSTITUTIONAL PROVISIONS.

Incorporation of.—The legislature shall not pass a private or local bill in any of the following cases:

.

Incorporating villages. (N. Y. Constitution, art. 3, sec. 18.)

But it may amend a village charter existing before this provision was adopted. *Reed v. Schmidt*, 37 Hun, 223.

Counties, cities, towns and villages not to give or loan money or credit; limitation of indebtedness.—No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. * * (N. Y. Constitution, art. 8, sec. 10.)

An issue of bonds to raise money to make immediate payment for local improvements, to be reimbursed by a subsequent assessment on the land-owners benefited, is not a loaning of city "credit or money" within the prohibition of this section. *People ex rel. v. Bangs*, 67 N. Y. 568.

The caring for the poor of a city through the instrumentality of a private corporation is not prohibited by this section, and is not a gift of city money. *The Sheperd's Fold v. Mayor of New York*, 96 N. Y. 137. And an act providing that a part of city excise money be paid to the use of an inebriate asylum for the care of inebriates of a certain locality is making a provision for the support of the poor. *White v. The Inebriate Home for Kings Co.*, 141 id. 123.

The creation of a liability on towns for damages occasioned by defective highways and bridges is not a gift of money or property of the towns to or in aid of an individual within the meaning of this section. *Bidwell v. Town of Murray*, 40 Hun, 190.

An act authorizing a town holding railroad bonds to exchange them for common stock in the same railroad is unconstitutional. *Town of Wheatland v. Taylor*, 29 Hun, 70.

The creation of a debt for the purchase of lands outside the city limits for a park is for a "city purpose," and, therefore, valid. *Matter of Mayor, etc., of New York*, 99 N. Y. 569.

And the creation of a debt for the construction and operation of an electric light system by a city for its own and the use of its inhabitants is for a "city purpose." *Hequembourg v. City of Dunkirk*, 49 Hun, 550.

Municipalities have the right to compromise a claim which they dispute, but which in the end they deem wise and prudent to acknowledge in part. *Hills v. Peekskill Savings Bank*, 101 N. Y. 490.

Stocks and bonds created by the city of New York and held by the commissioners of the sinking fund are not debts to be met in the future by taxation, and are not such debts as the municipality can be called upon to pay. *Banks for Savings in New York City v. Grace*, 102 N. Y. 313.

The issue of bonds by city for a water supply is for a "city purpose," and therefore not within the prohibition of this section. *Sweet v. City of Syracuse*, 123 N. Y. 316.

Maintenance and support of inmates of charitable institutions.—Nothing in this Constitution contained shall prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper; or prevent any county, city, town or village from providing for the care, support, maintenance and secular education, of inmates of orphan asylums, homes for dependent children or correctional institutions, whether under public or private control. Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required by the Legislature. No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the state board of charities. Such rules shall be subject to the control of the Legislature by general laws. (N. Y. Constitution, art. 8, sec. 14.)

Board of education may provide for education of inmates of incorporated orphan asylums. *Sargent v. Board of Education, etc.*, 35 Misc. 321; affirmed, Appellate Division, 4th Dept.

No aid to denominational schools.—Neither the State nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught. (N. Y. Constitution, art. 9, sec. 4.)

Orphan asylums wherein no religious instruction is given during school hours not within prohibition. *Sargent v. B. of Ed. of Rochester*, 35 Misc. 321; affirmed, Appellate Division, 4th Dept.

Appointment or election of officers, not provided for by this Constitution.—All county officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the Legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this Constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct. (N. Y. Constitution, art. 10, sec. 2.)

Albany police bill allowing minority of common council to appoint police commissioners is invalid. *Rathbone v. Wirth*, 150 N. Y. 459.

The Legislature may attach a penalty to the refusal to accept office. *City of Brooklyn v. Scholes*, 31 Hun, 110.

A county officer is one required to reside in and perform duties in the county; the health officer of the city and county of New York is not one. *Matter of Whiting*, 2 Barb. 513.

A commissioner of loans is a county officer. *Matter of Carpenter*, 7 Barb. 30.

The Legislature may appoint commissioners to widen a highway by proceedings unlike those of commissioners of highways. *People ex rel. v. McDonald*, 69 N. Y. 362.

They may authorize the appointment of a special surrogate by the Supreme Court. *Matter of Hathaway*, 71 N. Y. 238.

The appointment of Central park commissioners by the Legislature was valid. *Astor v. Mayor*, 62 N. Y. 367.

The reservation of the right to elect relates only to such offices as existed at the time the Constitution took effect. *People v. Draper*, 15 N. Y. 532; *People ex rel. Kingsland v. Palmer*, 52 id. 83.

This provision applies to town collectors; *People ex rel. v. McKinney*, 52 N. Y. 374; and tax receiver; *People ex rel. v. Crooks*, 53 id. 648; and tax commissioners in New York city. *People v. Raymond*, 37 id. 428.

Where a new town is created out of an old one a provision that the old officers should continue in office and act for both towns till the next election, is constitutional. *People ex rel. v. Hayt*, 7 Hun, 39.

Not applicable to transfer of power from one local board to another. *Matter of Lester*, 21 Hun, 130.

An act abolishing election of commissioners of charities and substituting appointment by the pro tem, president of the board of supervisors, is legal. *Matter of Carboy*, 27 Hun, 82.

Act appointing police justice in a village with criminal jurisdiction of justices of peace of towns, valid. *Bocock v. Cochran*, 32 Hun, 521.

Not applicable to park police. *Matter of Mayor*, 90 N. Y. 569.

The members of the board of examiners created by the act of 1874, chap. 547, are not as such, city officers of the city of New York; 106 N. Y. 566.

Act extending term of office of present incumbent invalid. *Matter of Burger*, 21 Visc. 370.

Law providing for grading of certain officers valid. *People ex rel. White v. York*, 35 App. Div. 300. See, also, *People ex rel. Percival v. Cram*, 164 N. Y. 166.

Organization of cities and villages.—It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments, and in contracting debt by such municipal corporations. * * * (N. Y. Constitution, art. 12, sec. 1.)

Section 9 of article VIII of the amended Constitution of 1846, without change. Am'd in 1905 by adding provision for regulation of wages, etc., of employees of villages, etc.

This provision is merely a direction to the Legislature for the exercise of a power which had been restricted by former Constitution. *Bank of Chenango v. Brown*, 26 N. Y. 467.

This section authorizes the Legislature to restrict the power of incurring indebtedness by municipal corporations, and the degree of such restriction is in the discretion of the Legislature. *Sweet v. City of Syracuse*, 129 N. Y. 316, 331.

The Legislature is not prohibited from authorizing a municipal corporation to incur an indebtedness of a new and unusual character. *Bank of Rome v. City of Rome*, 18 N. Y. 38; *Grant v. Courter*, 24 Barb. 232; *Benson v. Mayor of Albany*, id. 248.

By this section local legislative powers may be delegated to villages and cities. *Consumers' Gas Co. v. Spring Co.*, 61 Hun, 135; *Wallerstein v. Judge*, 24 N. Y. St. Repr. 814.

CODE OF CIVIL PROCEDURE—MISCELLANEOUS PROVISIONS.

§ 426. [Am'd, 1879.] How personal service of summons made upon a natural person.

Personal service of the summons upon a defendant, being a natural person, must be made by delivering a copy thereof, within the state, as follows:

1. If the defendant is an infant, under the age of fourteen years, to his father, mother or guardian; or, if there is none within the state, to the person having the care and control of him, or with whom he resides, or in whose service he is employed. If the defendant is an infant over the age of fourteen years, to the infant in person, and also to his father, mother or guardian; or, if there is none within the state, to the person having the care and control of him, or with whom he resides, or in whose service he is employed. Where the defendant is an infant under the age of fourteen years, the court shall, in the defendant's interest, make an order, requiring a copy of the summons to be also delivered, in behalf of the defendant, to a person designated in the order, and that service of the summons shall not be deemed complete until it is so delivered. Where the defendant is an infant over the age of fourteen years a similar order may be made by the court in its discretion, with or without application therefor.

Amended by L. 1913, ch. 279. In effect Sept. 1, 1913.

§ 843. [Am'd, 1877.] Oaths and affidavits; in special cases.

Where an officer, person, board, or committee, has been heretofore, or is hereafter authorized by law, to take or hear testimony or to hear or receive an affidavit, or to take a deposition, in relation to a matter, concerning which he or it has a duty to perform, the officer or person, or a member of the board or committee, may administer an oath, for that purpose. Where an officer, person, board, or committee, to whom or to which application is made to do an act in an official capacity, requires information or proof, to enable him or it to decide upon the propriety of doing the act, he or it may receive an affidavit for that purpose.

§ 844. Id.; without the state.

An oath or affidavit required, or which may be received, in an action, special proceeding, or other matter, may be taken, without the state, except where it is otherwise specially prescribed by law, before an officer authorized by the laws of the state, to take and certify the acknowledgment and proof of deeds, to be recorded in the state; and, when certified by him to have been taken before him, and accompanied with the like certificates, as to his official character and the genuineness of his signature, as are required to entitle a deed acknowledged before him to be recorded within the state, may be used, as if taken and certified in this state, by an officer authorized by law to take and certify the same.

§ 845. [Am'd, 1899.] General mode of swearing.

Except as otherwise specially prescribed in this article, when an oath is administered, the witness shall lay his hand on the gospels and express assent to the oath, and it shall be according to the present practice except that the witness need not kiss the gospels.

§ 846. [Am'd, 1899.] When kissing the gospels dispensed with.

The oath must be administered in the following form, to person who so desires, the laying of the hand upon the gospels being omitted: "You do swear, in the presence of the ever-living God." While so swearing, he may or may not hold up his hand, at his option.

§ 847. When affirmation to be made.

A solemn declaration or affirmation, in the following form, must be administered to a person who declares that he has conscientious scruples against taking an oath, or swearing in any form: "You do solemnly, sincerely, and truly, declare and affirm."

§ 849. Swearing persons not Christians.

A person believing in a religion, other than the Christian, may be sworn, according to the peculiar ceremonies, if any, of his religion, instead of as prescribed in section eight hundred and forty-five or section eight hundred and forty-six of this act.

§ 850. Court may examine witness.

The court or officer may examine an infant, or a person apparently of weak intellect, produced before it or him, as a witness, to ascertain his capacity and the extent of his knowledge; and may inquire of a person,

produced as a witness, what peculiar ceremonies in swearing he deems most obligatory.

§ 852. Mode of serving subpoena issued out of a court.

A subpoena, issued out of the court, to compel the attendance of a witness, and, where the subpoena so requires, to compel him to bring with him a book or paper, must be served as follows:

1. The original subpoena must be exhibited to the witness.
2. A copy of the subpoena, or a ticket containing its substance, must be delivered to him.
3. The fees, allowed by law, for traveling to, and returning from, the place where he is required to attend, and for one day's attendance, must be paid or tendered to him.

§ 853. Penalty for disobedience.

A person so subpoenaed, who fails, without reasonable excuse, to obey the subpoena, or a person who fails, without reasonable excuse, to obey an order, duly served upon him, made by the court, or a judge, in an action, before or after final judgment therein, requiring him to attend, and be examined, or so to attend, and bring with him a book or paper, is liable, in addition to punishment for contempt, for the damages sustained by the party aggrieved in consequence of the failure, and fifty dollars in addition thereto. Those sums may be recovered in one action, or in separate actions. If he is a party to the action in which he was subpoenaed, the court may, as an additional punishment, strike out his pleading.

§ 854. [Am'd, 1900.] Subpoena to be issued by judge, etc.

When a judge, or an arbitrator, referee, or other person, or a board or committee, or a committee of either house of the legislature, or a joint committee thereof, duly empowered by resolution or act to sit and take testimony during the session thereof, or after the adjournment thereof, has been heretofore or is hereafter expressly authorized by law to hear, try, or determine a matter, or to do any other act in an official capacity, in relation to which proof may be taken, or the attendance of a person as a witness may be required; or to require a person to attend, either before him or it, or before another judge, or officer, or a person designated in a commission issued by a court of another state or country, to give testimony, or to have his deposition taken, or to be examined; a subpoena may be issued, by and under the hand of the judge, arbitrator, referee, or other person, or the chairman or a majority of the board or committee, requiring the person to attend; and also, in a proper case, to bring with him a book or a paper. The subpoena must be served, as prescribed in section eight hundred and fifty-two of this act. This section does not apply to a matter arising, or an act to be done, in an action in a court of record.

§ 926. [Am'd, 1877.] Affidavit of printer, etc., evidence.

The affidavit of the printer or publisher of a newspaper, published within the state, or his foreman or principal clerk, showing the publication of a notice or other advertisement, authorized or required, by a law of the state, to be published in that newspaper, annexed to a printed copy of the notice or other advertisement, may be read in evidence; and is presumptive evi-

dence of the publication, and, also, of the matters stated therein, showing that the deponent is authorized to make the affidavit. But this section does not apply to a case, where the affidavit is required by law to be filed, unless it has been duly filed; or to a case, where the mode of proving a publication is otherwise specially prescribed by law.

§ 941. [Am'd, 1894.] Ordinances, etc., of cities, villages, etc.

An act, ordinance, resolution, by-law, rule or proceeding of the common council of a city, or of the board of trustees of an incorporated village, or of a local board of health of a city, town or incorporated village or of a board of supervisors, within the state, may be read in evidence, either from a copy thereof, certified by the city clerk, village clerk, clerk of the common council, clerk or secretary of the local board of health, or clerk of the board of supervisors; or from a volume printed by authority of the common council of the city, or the board of trustees of the village or the local board of health of the city, town or village, or the board of supervisors.

§ 1667. Action for cutting, etc., trees.

If any person cuts down or carries off any wood, underwood, tree, or timber, or girdles or otherwise despoils a tree on the land of another, without the owner's leave; or on the common, or other land, of a city, village, or town, without having right or privilege in those lands, or license from the proper officer; an action may be maintained against him, by the owner, or the city, village, or town, as the case may be.

§ 1668. Id.; when treble damages may be recovered.

In an action brought as prescribed in the last section, the plaintiff may state in his complaint the amount of his damages, and demand judgment for treble the sum, so stated. Thereupon, if the inquisition, or, where issues of fact are tried, the verdict, report or decision, awards him any damages, he is entitled to judgment for treble the sum so awarded, except that in either of the following cases, judgment must be rendered for single damages only

1. Where the verdict, report, or decision finds affirmatively that the injury, for which the action was brought, was casual and involuntary; or that the defendant, when he committed the injury, had probable cause to believe that the land was his own.

2. Where the defendant has pleaded, and the verdict, report, or decision finds affirmatively, that the injury, for which the action was brought, was committed by taking timber, for the purpose of making or repairing a public road, or a public bridge, or by taking any wood, underwood, or tree, for a like purpose, by authority of a commissioner or overseer of highways.

§ 1897. Indorsement upon summons.

In an action to recover a penalty or forfeiture, given by a statute, if a copy of the complaint is not delivered to the defendant with a copy of the summons, a general reference to the statute must be indorsed upon the copy of the summons so delivered, in the following form: "According to the provisions of," etc.; adding such a description of the statute, as will identify it with convenient certainty, and also specifying the section, if penalties or

forfeitures are given, in different sections thereof, for different acts or omissions.

§ 1996. [Am'd, 1897.] Actions by certain specified officers.

An action or special proceeding may be maintained, by the trustee or trustees of a school district; the overseer or overseers of the poor of a village, or city; the county superintendent or superintendents of the poor; or the supervisors of a county, upon a contract, lawfully made with those officers or their predecessors, in their official capacity; to enforce a liability created, or a duty enjoined, by law, upon those officers, or the body represented by them; to recover a penalty or a forfeiture, given to those officers, or the body represented by them; or to recover damages for an injury to the property or rights of those officers, or the body represented by them; although the cause of action accrued before the commencement of their term of office.

§ 3357. Title.

This title shall be known as the condemnation law.

§ 3358. [Am'd, 1896.] Definitions.

The term "person," when used herein, includes a natural person and also a corporation, joint-stock association, the state and a political division thereof, and any commission, board, board of managers or trustees in charge or having control of any of the charitable or other institutions of the state; the term "real property," any right, interest or easement therein or appurtenances thereto; and the term "owner," all persons having any estate, interest, or easement in the property to be taken, or any lien, charge, or incumbrance thereon. The person instituting the proceedings shall be termed the plaintiff; and the person against whom the proceeding is brought, the defendant.

§ 3359. Proceedings to be taken as prescribed in this title.

Whenever any person is authorized to acquire title to real property, for a public use by condemnation, the proceeding for that purpose shall be taken in the manner prescribed in this title.

§ 3360. Petition; what to contain.

The proceeding shall be instituted by the presentation of a petition by the plaintiff to the supreme court, setting forth the following facts:

1. [Am'd, 1896.] His name, place of residence, and the business in which engaged; if a corporation or joint-stock association, whether foreign or domestic, its principal place of business within the state, the names and places of residence of its principal officers, and of its directors, trustees or board of managers, as the case may be, and the object or purpose of its incorporation or association; if a political division of the state, the names and places of residence of its principal officers; and if the state, or any commission or board of managers or trustees in charge or having control of any of the charitable or other institutions of the state, the name, place of residence of the officer acting in its or their behalf in the proceedings.

2. A specific description of the property to be condemned, and its location, by metes and bounds, with reasonable certainty.

3. The public use for which the property is required and a concise statement of the facts showing the necessity of its acquisition for such use.

4. The names and places of residence of the owners of the property; if an infant, the name and place of residence of his general guardian, if he has one; if not, the name and place of residence of the person with whom he resides; if a lunatic, idiot, or habitual drunkard, the name and place of residence of his committee or trustee, if he has one; if not, the name and place of residence of the person with whom he resides. If a non-resident, having an agent or attorney residing in the state authorized to contract for the sale of the property, the name and place of residence of such agent or attorney; if the name or place of residence of any owner cannot after diligent inquiry be ascertained, it may be so stated with a specific statement of the extent of the inquiry which has been made.

5. That the plaintiff has been unable to agree with the owner of the property for its purchase, and the reason of such inability.

6. The value of the property to be condemned.

7. A statement that it is the intention of the plaintiff, in good faith, to complete the work or improvement, for which the property is to be condemned; and that all the preliminary steps required by law have been taken to entitle him to institute the proceeding.

8. A demand for relief, that it may be adjudged that the public use requires the condemnation of the real property described, and that the plaintiff is entitled to take and hold such property for the public use specified, upon making compensation therefor, and that commissioners of appraisal be appointed to ascertain the compensation to be made to the owners for the property so taken.

§ 3361. Notice to be annexed to petition; service of.

There must be annexed to the petition a notice of the time and place at which it will be presented to a special term of the supreme court, held in the judicial district where the property or some portion of it is situated, and a copy of the petition and notice must be served upon all the owners of the property at least eight days prior to its presentation.

§ 3362. Service of petition and notice.

Service of the petition and notice must be made in the same manner as the service of a summons in an action in the supreme court is required to be made, and all the provisions of articles one and two of title one of chapter five of this act, which relate to the service of a summons, either personally or in any other way, and the mode of proving service, shall apply to the service of the petition and notice. If the defendant has an agent or attorney residing in this state, authorized to contract for the sale of the real property described in the petition, service upon such agent or attorney will be sufficient service upon such defendant. In case the defendant is an infant of the age of fourteen years or upwards, a copy of the petition and notice shall also be served upon his general guardian, if he has one; if not, upon the person with whom he resides.

§ 3363. Appearance of infant, idiot, lunatic or habitual drunkard.

If a defendant is an infant, idiot, lunatic or habitual drunkard, it shall be the duty of his general guardian, committee or trustee, if he has one,

to appear for him upon the presentation of the petition and attend to his interests, and in case he has none, or in case his general guardian, committee or trustee fails to appear for him, the court shall, upon the presentation of the petition and notice, with proof of service, without further notice, appoint a guardian ad litem for such defendant, whose duty it shall be to appear for him and attend to his interests in the proceeding, and, if deemed necessary to protect his rights, the court may require a general guardian, committee or trustee, or a guardian ad litem to give security in such sum and with such sureties as the court may approve. If a service other than personal has been made upon any defendant, and he does not appear upon the presentation of the petition, the court shall appoint some competent attorney to appear for him and attend to his interests in the proceeding.

§ 3364. Appearance.

The provisions of law and of the rules and practice of the court, relating to the appearance of parties in person or by attorney in actions in the supreme court, shall apply to the proceeding from and after the service of the petition, and all subsequent orders, notices and papers may be served upon the attorney appearing and upon a guardian ad litem in the same manner and with the same effect as the service of papers in an action in the supreme court may be made.

§ 3365. Answer; what to contain.

Upon presentation of the petition and notice with proof of service thereof, an owner of the property may appear and interpose an answer, which must contain a general or specific denial of each material allegation of the petition controverted by him, or of any knowledge or information thereof sufficient to form a belief, or a statement of new matter constituting a defence to the proceeding.

§ 3366. Verification of petition or answer.

A petition or answer must be verified, and the provisions of this act relating to the form and contents of the verification of pleadings in courts of record, and the persons by whom it may be made, shall apply to the verification.

§ 3367. Trial of issues.

The court shall try any issue raised by the petition and answer at such time and place as it may direct, or it may order the same to be referred to a referee to hear and determine, and upon such trial the court or referee shall file a decision in writing, or deliver the same to the attorney for the prevailing party, within twenty days after the final submission of the proofs and allegations of the parties, and the provisions of this act relating to the form and contents of decisions upon the trial of issues of fact by the court or a referee, and to making and filing exceptions thereto, and the making and settlement of a case for the review thereof upon appeal, and to the proceedings which may be had in case such decision is not filed or delivered within the time herein required, and to the powers of the court and referee upon such trial, shall be applicable to a trial and decision under the title.

§ 3368. Certain provisions applicable.

The provisions of title one of chapter eight of this act shall also apply to proceedings had under this title.

§ 3369. [Am'd 1895, 1913.] Judgment; costs when to defendant; commissioners.

Judgment shall be entered pursuant to the direction of the court or referee in the decision filed. If in favor of the defendant, the petition shall be dismissed, with costs to be taxed by the clerk, at the same rates as are allowed, of course, to a defendant prevailing in an action in the supreme court, including the allowances for proceedings before and after notice of trial. If the decision is in favor of the plaintiff, or if no answer has been interposed and it appears from the petition that he is entitled to the relief demanded, judgment shall be entered, adjudging that the condemnation of the real property described is necessary for the public use, and that the plaintiff is entitled to take and hold the property for the public use specified, upon making compensation therefor, and the court shall thereupon appoint three disinterested and competent freeholders, residents of the judicial district embracing the county where the real property or some part of it is situated, or of some county adjoining such judicial district, commissioners to ascertain the compensation to be made to the owners for the property to be taken for the public use specified, and fix the time and place for the first meeting of the commissioners. Provided, however, that in any such proceeding instituted within the first or second judicial district, such commissioners shall be residents of the county where the real property, or some part of it, is situated, or of some adjoining county. If a trial has been had, at least eight days' notice of such appointment must be given to all the defendants who have appeared. The parties may waive, in writing, the provisions of this section as to the residence of the commissioners, and in that case they may be residents of any county in the state. Where owners of separate properties are joined in the same proceeding, or separate properties of the same owner are to be condemned, more than one set of commissioners may be appointed.

§ 3370. [Am'd 1898, 1913.] Duties and powers of commissioners.

The commissioners shall take and subscribe the constitutional oath of office. Any of them may issue subpoenas and administer oaths to witnesses; a majority of them may adjourn the proceeding before them, from time to time in their discretion. Whenever they meet, except by appointment of the court or pursuant to adjournment, they shall cause at least eight days' notice of such meeting to be given to the defendants who have appeared, or their agents or attorneys. They shall view the premises described in the petition, and hear the proof and allegations of the parties, and reduce the testimony taken by them, if any, to writing, and after the testimony in each case is closed, they, or a majority of them, all being present, shall, without unnecessary delay ascertain and determine the compensation which ought justly to be made by the plaintiff to the owners of the property appraised by them; and, in fixing the amount of such compensation, they shall not make any allowance or deduction on account of any real or supposed benefits which the owners may derive from the public use for which the property is to be taken, or the construction of any proposed improvement connected with such public use. But in case the plaintiff is a railroad corporation and such real property shall belong to any other railroad corporation, the commissioners on fixing the amount of such compensation, shall fix the same at its fair value for railroad purposes. They shall make a report of their proceedings to the

supreme court with the minutes of the testimony taken by them, if any; and they shall each be entitled to six dollars for services for every day they are actually engaged in the performance of their duties, and their necessary expenses to be paid by the plaintiff; provided, that in proceedings within the counties of New York and Kings such commissioners shall be entitled to such additional compensation not exceeding twenty-five dollars for every such day, as may be awarded by the court, and provided that in proceedings instituted by a village or any board thereof under this title such commissioners shall be entitled to such additional compensation, not exceeding five dollars for every such day, as may be awarded by the court.

Amended by L. 1898, ch. 384 and L. 1913, ch. 232, in effect Sept. 1, 1913.

§ 3371. Confirmation or setting aside report; deposit when payable.

Upon filing the report of the commissioners, any party may move for its confirmation at a special term, held in the district where the property or some part of it is situated, upon notice to the other parties who have appeared, and upon such motion, the court may confirm the report, or may set it aside for irregularity, or for error of law in the proceedings before the commissioners, or upon the ground that the award is excessive or insufficient. If the report is set aside, the court may direct a rehearing before the same commissioners, or may appoint new commissioners for that purpose, and the proceedings upon such rehearing shall be conducted in the manner prescribed for the original hearing, and the same proceedings shall be had for the confirmation of the second report, as are herein prescribed for the confirmation of the first report. If the report is confirmed, the court shall enter a final order in the proceeding, directing that compensation shall be made to the owners of the property, pursuant to the determination of the commissioners, and that upon payment of such compensation, the plaintiff shall be entitled to enter into the possession of the property condemned, and take and hold it for the public use specified in the judgment. Deposit of the money to the credit of, or payable to the order of the owner, pursuant to the direction of the court, shall be deemed a payment within the provisions of this title.

§ 3372. Offer to purchase; costs; additional allowance.

In all cases where the owner is a resident and not under legal disability to convey title to real property the plaintiff, before service of his petition and notice, may make a written offer to purchase the property at a specified price, which must within ten days thereafter be filed in the office of the clerk of the county where the property is situated; and which cannot be given in evidence before the commissioners, or considered by them. The owner may at the time of the presentation of the petition, or at any time previously, serve notice in writing of the acceptance of plaintiff's offer, and thereupon the plaintiff may, upon filing the petition, with proof of the making of the offer and its acceptance, enter an order that upon payment of the compensation agreed upon, he may enter into possession of the real property described in the petition, and take and hold it for the public use therein specified. If the offer is not accepted, and the compensation awarded by the commissioners does not exceed the amount of the offer with interest from the time it was made, no costs shall be allowed to either party. If the compensation awarded shall exceed the amount of the offer with interest from the time it was made, or if no offer was made, the court shall, in the final order, direct that the defendant recover of the plaintiff the costs of the proceeding, to be taxed by the clerk at the same rate as is allowed of course,

to the defendant when he is the prevailing party in an action in the supreme court, including the allowances for proceedings, before and after notice of trial, and the court may also grant an additional allowance of costs, not exceeding five per centum upon the amount awarded. The court shall also direct in the final order what sum shall be paid to the general or special guardian, or committee or trustee of an infant, idiot, lunatic or habitual drunkard, or to an attorney appointed by the court to attend to the interests of any defendant upon whom other than personal service of the petition and notice may have been made, and who has not appeared, for costs, expenses and counsel fees and by whom or out of what fund the same shall be paid. If a trial has been had, and all the issues determined in favor of the plaintiff, costs of the trial shall not be allowed to the defendant, but the plaintiff shall recover of any defendant answering the costs of such trial caused by the interposition of the unsuccessful defence, to be taxed by the clerk at the same rate as is allowed to the prevailing party for the trial of an action in the supreme court.

§ 3373. Judgment, how enforced; delivery possession of premises; when writ of assistance to issue.

Upon the entry of the final order, the same shall be attached to the judgment-roll in the proceeding, and the amount directed to be paid, either as compensation to the owners, or for the costs or expenses of the proceeding, shall be docketed as a judgment against the person who is directed to pay the same, and it shall have all the force and effect of a money judgment in an action in the supreme court, and collection thereof may be enforced by execution and by the same proceedings as judgments for the recovery of money in the supreme court may be enforced under the provisions of this act. When payment of the compensation awarded, and costs of the proceeding, if any, has been made, as directed in the final order, and a certified copy of such order has been served upon the owner, he shall, upon demand of the plaintiff, deliver possession thereof to him, and in case possession is not delivered when demanded, the plaintiff may apply to the court without notice, unless the court shall require notice to be given, upon proof of such payment and of service of the copy order, and of the demand and non-compliance therewith, for a writ of assistance, and the court shall thereupon cause such writ to be issued, which shall be executed in the same manner as when issued in other cases for the delivery of possession of real property.

§ 3374. [Am'd, 1894.] Abandonment and discontinuance of proceeding.

Upon the application of the plaintiff to be made at any time after the presentation of the petition and before the expiration of thirty days after the entry of the final order, upon eight days' notice of motion to all other parties to the proceeding who have appeared therein or upon an order to show cause, the court may, in its discretion, and for good cause shown, authorize and direct the abandonment and discontinuance of the proceeding, upon payment of the fees and expenses, if any, of the commissioners, and the costs and expenses directed to be paid in such final order, if such final order shall have been entered, and upon such other terms and conditions as the court may prescribe; and upon the entry of the order granting such application and upon compliance with the terms and conditions therein prescribed, payment of the amount awarded for compensation, if such com-

pensation shall have been theretofore awarded, shall not be enforced, but in such case, if such abandonment and discontinuance of the proceeding be directed upon the application of the plaintiff, the order granting such application if permitting a renewal of such proceedings, shall provide that proceedings to acquire title to such lands or any part thereof shall not be renewed by the plaintiff without a tender or deposit in court of the amount of the award and interest thereon.

§ 3375. [Am'd, 1895.] Appeal from final orders; stay.

Appeal may be taken to the appellate division of the supreme court from the final order, within the time provided for appeals from orders by title four of chapter twelve of this act; and all the provisions of such chapter relating to appeals to the appellate division of the supreme court from orders of the special term shall apply to such appeals. Such appeal will bring up for review all the proceedings subsequent to the judgment, but the judgment and proceedings antecedent thereto may be reviewed on such appeal, if the appellant states in his notice that the same will be brought up for review, and exceptions shall have been filed to the decision of the court or the referee, and a case or a case and exceptions shall have been made, settled and allowed, as required by the provisions of this act, for the review of the trial of actions in the supreme court without a jury. The proceedings of the plaintiff shall not be stayed upon such an appeal, except by order of the court, upon notice to him, and the appeal shall not affect his possession of the property taken, and the appeal of a defendant shall not be heard except on his stipulation not to disturb such possession.

§ 3376. [Am'd, 1895.] Appeal from judgment by plaintiff.

If a trial has been had and judgment entered in favor of the defendant, the plaintiff may appeal therefrom to the appellate division of the supreme court within the time provided for appeals from judgments by title four of chapter twelve of this act, and all the provisions of said chapter relating to appeals from judgments shall apply to such appeals; and on the hearing of the appeal the appellate division may affirm, reverse or modify the judgment, and in case of reversal may grant a new trial, or direct that judgment be entered in favor of the plaintiff. If the judgment is affirmed, costs shall be allowed to the respondent, but if reversed or modified, no costs of the appeal shall be allowed to either party.

§ 3377. When general term may direct a new appraisal.

On the hearing of the appeal from the final order the court may direct a new appraisal before the same or new commissioners, in its discretion, and the report of such commissioners shall be final and conclusive upon all parties interested. If the amount of the compensation to be paid is increased by the last report, the difference shall be a lien upon the land appraised, and shall be paid to the parties entitled to the same, or shall be deposited as the court shall direct; and if the amount is diminished, the difference shall be refunded to the plaintiff by the party to whom the same may have been paid, and judgment therefor may be rendered by the court, on the filing of the last report, against the parties liable to pay the same.

§ 3378. Conflicting claimants.

If there are adverse and conflicting claimants to the money, or any part of it, to be paid as compensation for the property taken, the court may direct the money to be paid into the court by the plaintiff, and may determine who is entitled to the same, and direct to whom the same shall be paid, and may, in its discretion, order a reference to ascertain the facts on which such determination and direction are to be made.

§ 3379. [Am'd, 1900.] Party in possession may stay on giving security.

At any stage of the proceeding the court may authorize the plaintiff, if in possession of the property sought to be condemned, to continue in possession, and may stay all actions or proceedings against him on account thereof, upon giving security, or depositing such sum of money as the court may direct to be held as security for the payment of the compensation which may be finally awarded to the owner therefor and the costs of the proceedings, and in every such case the owner may conduct the proceeding to a conclusion, if the plaintiff delays or neglects to prosecute the same. When the final award to any owner is less than fifty dollars, in proceedings to condemn a right of way, for telephone or telegraph poles and wires, the allowance of costs, if any, and the amount thereof not exceeding that prescribed by statute, shall be in the discretion of the court in any action or proceeding that may have been or may hereafter be stayed, if the telephone or telegraph poles and wires, in such action or proceeding so stayed, shall have been erected for more than three years prior to the commencement thereof.

§ 3380. Temporary possession pending proceedings.

When an answer to the petition has been interposed, and it appears to the satisfaction of the court that the public interests will be prejudiced by delay, it may direct that the plaintiff be permitted to enter immediately upon the real property to be taken, and devote it temporarily to the public use specified in the petition, upon depositing with the court the sum stated in the answer as the value of the property, and which sum shall be applied, so far as it may be necessary for that purpose, to the payment of the award that may be made, and the costs and expenses of the proceeding, and the residue, if any, returned to the plaintiff, and, in case the petition should be dismissed, or no award should be made, or the proceedings should be abandoned by the plaintiff, the court shall direct that the money so deposited, so far as it may be necessary, shall be applied to the payment of any damages which the defendant may have sustained by such entry upon and use of his property, and his costs and expenses of the proceeding, such damages to be ascertained by the court, or a referee to be appointed for that purpose, and if the sum so deposited shall be insufficient to pay such damages, and all costs and expenses awarded to the defendant, judgment shall be entered against the plaintiff for the deficiency, to be enforced and collected in the same manner as a judgment in the supreme court; and the possession of the property shall be restored to the defendant.

§ 3381. Notice of pendency of action to be filed.

Upon service of the petition, or at any time afterwards before the entry of the final order, the plaintiff may file in the clerk's office of each county, where any part of the property is situated, a notice of the pendency of the proceeding, stating the names of the parties and the object of the proceed-

ing, and containing a brief description of the property affected thereby, and from the time of filing, such notice shall be constructive notice to a purchaser, or incumbrancer of the property affected thereby, from or against a defendant with respect to whom the notice is directed to be indexed, as herein prescribed, and a person whose conveyance or incumbrance is subsequently executed or subsequently recorded, is bound by all proceedings taken in the proceeding after the filing of the notice, to the same extent as if he was a party thereto. The county clerk must immediately record such notice when filed in the book in his office kept for the purpose of recording notices of pendency of actions, and index it to the name of each defendant specified in the direction appended at the foot of the notice, and subscribed by the plaintiff or his attorney.

§ 3382. Power of court to make necessary orders.

In proceedings under this title, where the mode or manner of conducting all or any of the proceedings therein is not expressly provided for by law, the court before whom such proceedings may be pending, shall have the power to make all necessary orders and give necessary directions to carry into effect the object and intent of this title, and of the several acts conferring authority to condemn lands for public use, and the practice in such cases shall conform, as near as may be, to the ordinary practice in such court.

§ 3383. Repealing clause; limitations.

So much of all acts and parts of acts as prescribe a method of procedure in proceedings for the condemnation of real property for a public use is repealed, except such acts and parts of acts as prescribe a method of procedure for the condemnation of real property for public use as a highway, or as a street, avenue, or public place in an incorporated city or village, or as may prescribe methods of procedure for such condemnation for any public use for, by, on behalf, on the part, or in the name of the corporation of the city of New York, known as the mayor, aldermen, and commonalty of the city of New York, or by whatever name known, or by or on the application of any board, department, commissioners or other officers acting for or on behalf or in the name of such corporation or city, or where the title to the real property so to be acquired vests in such corporation or in such city; and all proceedings for the condemnation of real property embraced within the exceptions enumerated in this section are exempted from the operation of this title.

§ 3384. When act takes effect.

This title shall take effect on the first day of May, one thousand eight hundred and ninety, and shall not affect any proceeding previously commenced.

CODE OF CRIMINAL PROCEDURE—MISCELLANEOUS PROVISIONS.

§ 56. Jurisdiction of courts.

Subject to the power of removal provided for in this chapter, courts of special sessions, except in the city and county of New York and the city of Albany, have in the first instance exclusive jurisdiction to hear and determine charges of misdemeanors committed within their respective counties, as follows:

1. Petit larceny, charged as a first offense.
2. Assault in the third degree.
3. Racing, running or testing the speed of any animal within one mile of the place where any court is held.
4. Wrongfully severing any produce or article from the freehold, not amounting to grand larceny.
5. Selling poisonous substances not labeled as required by law.
6. Wrongfully and maliciously removing, defacing or cutting down monuments or marked trees.
7. Wrongfully destroying or removing mile-stones, mile-boards or guide-boards, or altering or defacing any inscription thereon.
8. Wrongfully destroying any public or toll-gate or turnpike gate.
9. Intoxication of a person engaged in running any locomotive, engine upon any railroad, or while acting as conductor of a car, or train of cars, on any such railroad, or a misdemeanor committed by any person on a railroad car or train.
10. Setting up or drawing unauthorized lotteries, or printing and publishing an account of any such illegal lottery, game, or device, or selling lottery tickets, or procuring them to be sold, or offering for sale or distributing any property depending upon any lottery, or for selling any chances in any lottery contrary to the provisions of law.
11. Unlawfully running, trotting or pacing horses or any other animals.
12. Making or selling slung-shot or any similar weapon.
13. Unlawfully disclosing the finding of an indictment.
14. Unlawfully bringing to or carrying letters from any county jail, penitentiary or state prison.
15. Unlawfully destroying or injuring any mill-dam or embankment necessary for the support of such dam.
16. Unlawfully injuring any telegraph or telephone wire, post, pier, abutment, materials or property belonging to any line of telegraph or telephone, wilfully giving a false alarm of fire, or wilfully tampering, meddling or interfering with any station or box of any fire alarm telegraph or telephone system, or injuring any box, station, wires, poles, supports and appliances connected with or forming a part of any fire alarm telegraph or telephone system.
Amended by L. 1906, Ch. 279, and L. 1917, Ch. 671, in effect May 29, 1917.
17. Unlawfully counterfeiting any representation, likeness, similitude or copy of a private stamp, wrapper or label of any mechanic or manufacturer.
18. Malicious trespass on lands, trees or timber, or injuring any fruit or ornamental or shade trees or vines.
19. Maliciously breaking or lowering any canal walls, or wantonly opening any lock-gate, or destroying any bridge, or otherwise unlawfully injuring such canal or bridge.
20. Unlawfully counterfeiting or defacing marks on packages.
21. Unlawfully setting fire to wood or fallow land, or allowing the same to extend to lands of others, or unlawfully refusing to extinguish any fire.
22. Unlawfully or negligently cutting out, altering or defacing any mark on any logs, timber wood or plank, floating in any waters of this state, or lying on the banks or shores of any such waters, or at any saw-mills, or on any island where the same may have drifted.
23. Unlawfully frequenting or attending a steamboat landing, railroad

depot, church, banking institution, broker's office, place of public amusement, auction-room, store, auction sale at private residence, passenger car, hotel, restaurant, or at any other gathering of people.

24. Unlawfully taking and carrying away the oysters of another, lawfully planted upon the bed of a river, bay, sound or other waters within the jurisdiction of this state.

25. Removing property out of the county, with intent to prevent the same from being levied upon by execution, or secreting, assigning, conveying or otherwise disposing of property, with intent to defraud any creditor, or to prevent the property being made liable for the payment of debts, or for receiving property with such intent.

26. Driving any carriage upon a turnpike, road or highway for the purpose of running horses; or wilfully and without authority riding a bicycle upon a sidewalk or footpath constructed, maintained, or allowed to remain for the exclusive use of pedestrians, in any street where a sidepath for bicycles is maintained outside of an incorporated city or village; or for driving or operating any automobile or motor vehicle upon any plank road, turnpike or public highway at an unlawful rate of speed. (Amended by L. 1902, Ch. 249. In effect Sept. 1, 1902.)

26-a. Reckless driving in violation of subdivision one of section fourteen of the general highway traffic law. (Subd. added by L. 1918, Ch. 306. In effect April 23, 1918.)

27. Cruelty to animals or children or offenses of children under section twenty-one hundred and eighty-six of the penal law. (Amended by L. 1909, Ch. 66, § 5. In effect Feb. 17, 1909.)

28. Cheating at games.

29. Winning or losing at any game or play, or by any bet, as much as twenty-five dollars within twenty-four hours.

30. Selling liquors in a court-house or jail contrary to law.

31. Exposure of the person contrary to law.

32. Crimes against the provisions of existing laws for the prevention of wanton or malicious mischief.

33. When a complaint is made to or a warrant is issued by a committing magistrate, for a violation of the laws relating to excise and the regulation of taverns, inns and hotels, or for unlawfully selling or giving to any Indian spirituous liquors or intoxicating drinks.

34. Frauds on hotel, inn, tavern and boarding-house keepers.

35. All violations of the provisions of the agricultural, poor and general business laws. (Amended by L. 1909, Ch. 66, § 5. In effect Feb. 17, 1909.)

36. When a complaint is made to or a warrant is issued by a committing magistrate for a violation of the provisions of section forty-three or seven hundred and twenty of the penal law of the state of New York. (Added by L. 1903, Ch. 92. Amended by L. 1909, Ch. 66, § 5. In effect Feb. 17, 1909.)

37. Such other jurisdiction as is now provided by special statute or municipal ordinance authorized by statute.

38. When a complaint is made to or a warrant is issued by a committing magistrate for any misdemeanor not included in the foregoing subdivisions of this section, if the accused shall elect to be tried by a court of special sessions, as provided by section two hundred and eleven. But this subdivision shall not apply to any misdemeanor which is or may be punishable by a fine exceeding fifty dollars, or by imprisonment exceeding six months.

39. All violations of the law regarding the junk business and requiring

persons engaged in such business to procure a license. (Added by L. 1906, Ch. 497. In effect Sept. 1, 1906.)

§ 74. Jurisdiction.

Police justices have such jurisdiction, and such only, as is specially conferred upon them by statute. The courts held by police justices are called police courts, and courts of special sessions are also called police courts, and are so designated in different parts of the Code.

§ 78. Compensation of justice.

A police justice cannot retain to his own use any costs or fees, but may receive for his services an annual salary, to be fixed in villages by the board of trustees, and in cities by the common council, except where the same is otherwise fixed by law; and such salary shall not be increased or decreased during his term of office.

§ 101. Force to preserve the peace, at public meetings, when and how ordered.

The mayor or other officer having the direction of the police in a city or village, must order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is to be apprehended.

§ 106. Magistrates and officers to command rioters to disperse.

When persons, to the number of five or more, armed with dangerous weapons, or to the number of ten or more, whether armed or not, are unlawfully or riotously assembled in a city, village or town, the sheriff of the county and his under sheriff and deputies, the mayor and aldermen of the city, or the supervisor of the town, or president or chief executive officer of the village, and the justices of the peace or the police justices of the city, village or town, or such of them as can forthwith be collected, must go among the persons assembled and command them, in the name of the people of the state, immediately to disperse.

§ 107. To arrest rioters, if they do not disperse.

If the persons assembled do not immediately disperse, the magistrates and officers must arrest them, or cause them to be arrested, that they may be punished according to law; and for that purpose, may command the aid of all persons present or within the county.

§ 108. Consequences of refusal to aid the magistrates or officers.

If a person so commanded to aid the magistrates or officers, neglects to do so, he is deemed one of the rioters, and is punishable accordingly.

§ 109. Consequences of neglect or refusal of a magistrate or officer to act.

If a magistrate or officer having notice of an unlawful or riotous assembly, mentioned in section one hundred and six, neglects to proceed to the place of the assembly, or as near thereto as he can with safety, and to

exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

§ 110. Proceedings, if rioters do not disperse.

If the persons assembled, and commanded to disperse, do not immediately disperse, any two of the magistrates or officers mentioned in section one hundred and six, may command the aid of a sufficient number of persons, and may proceed in such manner as in their judgment is necessary, to disperse the assembly and arrest the offenders.

PART III

PART III

FORMS

No. 1.

Notice of Hearing on Proposition for Incorporation. (Village Law, § 4.)

IN THE MATTER OF THE INCORPORATION OF THE VILLAGE OF

Notice is hereby given, in pursuance of section 4 of the Village Law, that a proposition for the incorporation of the village of....., has been received by me (or us); that a hearing will be had by me on such proposition at, on the day of, 18... at, in thenoon; and that such proposition will be open for public inspection at until such date.

Dated

Supervisor of the Town of

No. 2.

Decision of Supervisor. (Village Law, § 6.)

IN THE MATTER OF THE INCORPORATION OF THE VILLAGE OF

A proposition for the incorporation of the village of having been received by me, and a hearing having been held thereon in pursuance of section 4 of the Village Law on the day of, 18.... I hereby decide that such proposition complies in every respect with the Village Law (or, that such proposition does not comply with the Village Law in the following respects:)

Dated

Supervisor of the Town of

No. 3.

Notice of Appeal from Favorable Decision.

(Village Law, § 7.)

IN THE MATTER OF THE INCORPORATION OF THE VILLAGE OF

Take notice: The undersigned, a resident taxpayer of the town of, appeals to the County Court of, from the decision of the supervisor (or supervisors) of the town (or towns) of sustaining a proposition for the incorporation of the village of therein, filed in the clerk's office of such town on the day of, 18....

Dated

To A, B, Town Clerk of the Town of.....

No. 4.

Notice of Argument.

(Village Law, § 8.)

IN THE MATTER OF THE INCORPORATION OF THE VILLAGE OF

Sir.—Take notice that the appeal from the decision of the supervisors in the matter of the incorporation of the village of will be brought on for argument before the County Court of the county of on the day of, 18.., at, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard.

Dated

R S.

To A B, C D and E F.

No. 5.

Decision of the Court.

(Village Law, § 8.)

At a term of the County Court, held at,
on the day of, at
Present—Hon. A B, Judge.

IN THE MATTER OF THE INCORPORA-
TION OF THE VILLAGE OF

It having been made to appear to this court that a proposition for the incorporation of the village of, in the town of, was filed with the supervisor of such town and a hearing had thereon before such supervisor on the day of, 18.., and that the decision of such supervisor sustained the proposition for the incorporation of such village, and an appeal having been taken to this court by, a resident taxpayer of the town of, and such appeal having been duly heard by this court on the day of, 18.., at which hearing R S appeared in favor of sustaining the incorporation of such village and C D appeared in opposition thereto,

Ordered, That the decision of the supervisor therein be in all respects affirmed.

A B,
County Judge.

No. 6.

Notice of Election.

(Village Law, § 10.)

Notice is hereby given that on the day of, 18.., between one o'clock in the afternoon and eight o'clock in the evening an election will be held at to determine whether the territory hereinafter described shall be incorporated as the village of The territory proposed to be incorporated as described in the proposition for the incorporation of such village is as follows:

Dated

.....
Clerk of the Town of

No. 7.

Certificate of Canvass.

(Village Law, § 14.)

We hereby certify that on the day of, 18.., an election was held at, in the town of, county of, for the purpose of determining upon the incorporation of the territory described in the annexed notice, as the village of The following is a true and correct canvass of the ballots cast at such election:

Whole number of ballots cast was
 Number of ballots cast with words "for incorporation" thereon was
 Number of ballots cast with the words "against incorporations" thereon was
 Dated

.....

Inspectors of Election.

STATE OF NEW YORK, }
 County of }

A B, C D, and E F, being duly sworn depose and say, each for himself, that he was an inspector at an election held in pursuance of the annexed notice, and that the foregoing is a true canvass of the votes cast at such election.

A B,
 C D,
 E F.

Subscribed and sworn to before me, }
 this day of 18.. }
 H L,

Notary Public.

(Attach notice of election and affidavit of posting the same. If territory is in two or more towns the statement in the foregoing certificate should be made as to each town separately.)

No. 8.

Notice of Appeal from Election.

(Village Law, § 16.)

IN THE MATTER OF THE INCORPORATION OF THE VILLAGE OF

Take notice: The undersigned A. B. qualified to vote at the election held upon the day of to determine upon the incorporation of the village of appeals therefrom to the County Court of the county of

Dated

A B.

To C. D, Town Clerk of the Town of

No. 9.

Appointment of Officers.

(Village Law, § 27.)

In pursuance of section 27 of the Village Law, I hereby appoint A B as village clerk of the village of, and C D and E F and G H inspectors of election at the first election to be held therein.

Dated

R S,

Town Clerk of the Town of

No. 10.

Notice of Election.

(Village Law, § 28.)

Notice is hereby given that an election of officers will be held in the village of on the day of, 18.., between the hours of o'clock in the forenoon and o'clock in the afternoon, for the purpose of electing the following officers of such village: A president, two trustees, to hold office until the third Tuesday in March, 18.., (or, if such election is held after the first of September, but before the day fixed for the next annual election, one trustee to hold office until the third Tuesday in March, 18.., and one trustee to hold office until the third Tuesday in March, 18..), a treasurer and a collector.

Dated

.....,

Village Clerk.

No. 11.

Proposition to Change Number of Trustees.

(Village Law, § 45.)

(See Forms Nos. 20, 21, 22.)

Shall the number of trustees of the village of be changed from to (such number must be within the limitation prescribed by section 44.)

No. 12.

Proposition Determining Future Number of Trustees.

(Village Law, § 47.)

To the Board of Trustees of the Village of

The undersigned, twenty-five electors qualified to vote upon a proposition in such village, hereby request that the following proposition be submitted to the electors thereof at a special election to be held therein on the day of, 18.., in pursuance of section 47 of the Village Law.

Proposition determining future number of trustees.

Shall the number of trustees of such village be

(Number to be within limitations of section 44.)

Dated

A B,
C D,
E F. etc.

No. 13.

Proposition to Elect Trustees by Wards.

(Village Law, § 46.)

(See Forms Nos. 20, 21, 22.)

Shall the trustees of the village of be hereafter elected by wards, in pursuance of section 49 of the Village Law?

No. 14.

Resolution Dividing Villages into Wards.

(Village Law, § 46.)

At a meeting of the board of trustees of the village of, held on the day of, 18..

Whereas, A proposition for the election of the trustees of the village of by wards, was duly adopted by the electors thereof at an election held therein on the day of, 18..

Resolved, That the village is hereby divided into wards bounded and described as follows:

First ward (describe).

Second ward (describe).

Adopted.

Noes.....

Ayes.....

A B,
President.
C D,
Clerk.

No. 15.

Resolution Dividing Village into Election Districts.

(Village Law, § 49.)

At a meeting of the board of trustees of the village of, held on the day of, 18..

Whereas, It appears by the certificate of the canvass of an election held in the village of, on the day of, 18., that more than eight hundred votes were cast thereat for village officer,

Resolved, That the village is hereby divided into election districts bounded and described as follows:

First district (describe).

Second district (describe).

Adopted.

Ayes.....

Noes.....

A B,
President.
C D,
Clerk.

No. 16.

Resolution Designating Place and Time of Annual Election.

(Village Law, § 52.)

At a meeting of the board of trustees of the village of, held on the day of, 18..

Resolved, That the next annual election in the village of will be held at in such village (if village is divided into election districts, specify place in the district) between the hours of in the noon and o'clock in thenoon.

Adopted.

Ayes.....

Noes.....

A B,
President.
C D,
Clerk.

No. 17.

Notice of Election.

(Village Law, § 52.)

Notice is hereby given that the annual election will be held in the village of, at (if in more than one district, specify such places) on the day of, 18., between the hours of in thenoon, and in thenoon;

and that at such election the following officers are to be elected, for the terms set opposite thereto, respectively:

Officers,	Terms,
.....	
.....	

That at such election the following propositions are to be voted upon: (set forth each proposition whether proposed by the board of trustees, a separate board, or upon the request of twenty-five electors.)

Dated.....

A B,
President.
C D,
Clerk.

No. 18.

Certificate of Canvass.

(Village Law, § 53.)

This is to certify that the annual election was held at, in the village of, on the day of, 18..;

That at such election the total number of votes cast for the office of president was

That votes were cast for A B for such office;

That votes were cast for C D for such office;

(Repeat as to each office voted for.)

That the total number of votes cast upon the proposition to was

That the number of votes for such proposition was

That the number of votes against such proposition was

(Repeat as to each proposition voted for.)

Dated

.....,
.....,
.....,

Inspectors of Election.

STATE OF NEW YORK, }

County of }

ss.:

A B, C D, and E F, being each duly sworn, deposes and says, each for himself, that he was an inspector of election at an election held in pursuance of the annexed notice, and that the foregoing is a true canvass of the vote cast at such election.

A B,
C D,
E F.

Subscribed and sworn to before me, }
this day of 18.. }

R S.

(Attach notice of election and affidavit of posting the same.)

No. 19.

Notice of Special Election of Officers.

(Village Law, § 55.)

Notice is hereby given that the date fixed by law for the annual election in the village of, having passed and no election having been held thereon, a special election will be held therein (follow form No. 17).

No. 20.

Resolution Proposing to Submit Propositions.

(Village Law, § 56.)

At a meeting of the board of trustees of the village of, held on the day of, 18..

Resolved, That the following proposition be submitted to the electors of the village of, at the next annual election (or, at a special election), to be held on the day of, 18..

Proposition for (state subject).

Shall, etc.

A B,
President.
O D,
Clerk.

Adopted,

Ayes

Noes

No. 21.

Request for Submission of Proposition by Twenty-five Electors.

(Village Law, § 56.)

To the Board of Trustees of the Village of

We, the undersigned, twenty-five electors qualified to vote upon a proposition in such village, hereby request that the following proposition be submitted to the electors thereof in pursuance of section 59 of the Village Law.

Proposition for (state subject).

Shall, etc.

Dated

A B,
O D,
E F, etc.

No. 22.

Request for Submission of Proposition by Separate Board.

(Village Law, § 56.)

To the Board of Trustees of the Village of

The undersigned, a majority of the members of the board of fire (or other) commissioners of the village of, hereby request that the following proposition be submitted to the electors thereof in pursuance of section 59 of the Village Law:

Proposition for (state subject).

Shall, etc.

Dated

A B,
O D,
E F.

No. 23.

Resolution Fixing Time for Special Election.

(Village Law, § 56.)

At a meeting of the board of trustees of the village of
held on the day of, 18..

Whereas, A request was presented to the board of trustees of the village of, on the day of, 18., by twenty-five electors qualified to vote upon a proposition, requesting the submission of the following proposition to the electors thereof: (Set out proposition.)

Resolved, That such proposition be submitted at a special election to be held at on the day of, 18., between the hours of o'clock in thenoon to o'clock in the afternoon.

A B,
President.
C D,
Clerk.

Adopted.

Ayes.....

Noes.....

No. 24.

Official Undertaking.

(Village Law, § 58.)

Whereas, A B was elected (or appointed) of the village of, on the day of, 18..

Now, therefore, we, the said A B, as principal, and C D and E F, as sureties, do hereby undertake by and with the village of, in the sum of, that said A B will faithfully discharge and execute his duties as such and will faithfully account for and pay over all moneys received by him as such

A B,
C D,
E F.

STATE OF NEW YORK, }
County of } ss.:

On this day of, before me, the subscriber, personally appeared A B, C D and E F, to me personally known to be the persons described in and who executed the foregoing undertaking and severally acknowledged, each for himself, that they executed the same.

R S,
Notary Public.

Justification.

STATE OF NEW YORK, }
County of } ss.:

C D and E F, the sureties mentioned in the foregoing undertaking, being severally duly sworn, says, each for himself, that he is a resident and freeholder (or householder) within this state, and is worth dollars, over and above the debts and liabilities which he owes or has

incurred and exclusive of property exempt by law from levy and sale or execution.

C D,
E F.

Subscribed and sworn to before me, }
this day of 18.. }

N M,

Notary Public.

Approval.

The board of trustees has duly approved of the within undertaking, and of the sufficiency of the sureties therein named.

R S,
Clerk.

No. 25.

Oath of Office.

(Village Law, § 59.)

I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of of the village of, according to the best of my ability. (If the officer was chosen at an election the following shall be added):

And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote.

A B.

Subscribed and sworn to before me, }
this day of 18.. }

C D,

Notary Public.

No. 26.

Notice of Clerk to Person Chosen to Fill an Office.

(Village Law, § 59.)

To A B:

You will please take notice that at the annual election of the village of, you were elected to the office of, for a term beginning on and that you are required to file your oath of office with me before entering upon the duties thereof. (And, if an undertaking is required, that you are required by law to file your undertaking with me before entering upon the duties of your office, and that upon your failure to do so, you will be deemed to have declined such office.)

Dated

A B,
Village Clerk.

No. 27.

Resignation of Village Officer.

(Village Law, § 60.)

To the Board of Trustees of the Village of.....:

I hereby tender my resignation of the office of of said village for the following reasons:

Dated this day of, 18..

A B.

No. 28.

Appointment to Fill Vacancy.

(Village Law, § 61.)

At a meeting of the board of trustees of the village of, held at on the day of, 18..

Whereas, A vacancy has occurred in the office of of said village by the resignation (or otherwise) of A. B; now, therefore,

Resolved, That C D be hereby appointed to fill such vacancy until the end of the current official year. (If appointive, for the balance of the unexpired term.)

E F,
President.
G H,
Clerk.**Adopted.**

Ayes.....

Nays.....

No. 29.

Notice of Meeting of Board.

(Village Law, § 87.)

You are hereby notified that a special meeting of the board of trustees of the village of, will be held at in such village on the day of , 18.., at seven o'clock in the evening.

Dated

A B,
President.

No. 30.

Resolution for Arrest of Member.

(Village Law, § 88.)

At a meeting of the board of trustees of the village of, held on the day of, 18..

Whereas, A B, a member of the board of trustees of the village of, has absented himself from a meeting of such board of which he was duly notified and which is now in session;

Resolved, That such member be arrested by any peace officer residing in the village and brought before the board to answer for his neglect to attend such meeting.

Adopted.

Ayes.....

Noes.....

C D,
President.

E F,
Clerk.

Certificate of Clerk.

I hereby certify that I have compared the foregoing resolution with the original resolution filed with me, and that the same is a true and correct copy of such original, and of the whole thereof.

E F,
Village Clerk.

No. 31.

Form of Account.

(Village Law, § 89, subd. 21.)

The village of

In account with A. B. .

Dr.

Date.	NATURE.	Amount.
.....		
.....		
.....		

Dated

STATE OF NEW YORK, }
County of } ss.:

A B, being duly sworn, says, that the items of the foregoing account are correct, that the services and disbursements charged were in fact rendered or paid at the times stated therein, and that no part thereof has been paid or satisfied by the village.

A B.

Subscribed and sworn to before me, }
this day of 18.. }

.....,
Notary Public.

No. 32.

License.

(Village Law, § 91.)

A B is hereby licensed, in pursuance of section 90 of the Village Law, to in the village of, for the period of one year from the day of, 18.., upon the payment to the treasurer of such village of the sum of dollars, the fee fixed therefor by the board of trustees, in pursuance of the Village Law.

Dated

C D,
President.
E F,
Clerk.

Indorsement of Treasurer.

Received of A B, the sum of, the fee fixed by the within license.

Dated

G H,
Treasurer.

No. 33.

Assessment-Roll.

(Village Law, § 104.)

Assessment-roll of village of for the year 18..

RESIDENTS.

NAMES OF TAXABLE PERSONS.	Number of acres taxed.	Full value of real property taxed.	Full value of personal property taxed.	Value of rents taxed	Amount of tax.
James Smith.....	50	\$4,000 00	\$500 00	\$100 75	
James Smith, executor, etc.....	100	8,000 00	200 00	700 00	
John Doe, nonresident creditor.....					
The (name of corporation).....			{ Debt owed by 500 00 }		
Capital..... \$200,000					
Real estate... \$30,000					
Stock owned by Albany Home for Orphans... 5,000	Manufacturing building at 60 Pine st.	20,000 00	175,000 00		
	25,000				
	\$175,000				

LANDS OF NONRESIDENTS.

NAME OR DESCRIPTION OF TRACT.	No. lot.	Description of part.	No. section.	No. township.	No. range.	No. acres.	Full value.	Amount of tax.
Holland Company's Patent	1		2	3	1	200	\$10,000 00	\$
The tract described as follows (describe):.....	2		2	3	1	200	8,000 00	
.....	3		2	3	1	100	4,000 00	
.....								
.....								
.....								
.....								
.....	1		2	3	1	10	1,000 00	
.....	2	The portion thereof described as follows:.....						
.....								
.....								
.....								
.....			2	3	1	66½	5,000 00	
The tract described as follows: (describe), which is not subdivided into lots.....								
.....								
.....								
.....								
.....						5,900	50,000 00	

No. 34.

Notice of Meeting to Hear Complaints.

(Village Law, § 105.)

Take notice: The assessors of the village of have prepared their assessment-roll for the current year; that a copy thereof will be deposited with the village clerk, at his office (or, as the case may be), in such village, on the day of, next (at least five days prior to date of hearing), where it may be seen and examined by any person until the first Tuesday in May (or, June), next, and that on such day, at, between the hours of in thenoon and in thenoon,

the said assessors will meet for the purpose of completing such assessment-roll and of hearing and determining complaints in relation thereto, on the application of any person conceiving himself aggrieved thereby.

Dated

A B,
C D,
E F,
Assessors.

No. 35.

Affidavit on Application to Correct Assessment.

(Village Law, § 105.)

STATE OF NEW YORK, }
County of } ss.:

A B, being duly sworn, says that he is assessed on the assessment-roll of the village of, for the year 18.., for dollars; that such assessment is incorrect and excessive for the reason that just debts owing by him have not been deducted; that the amount of such debts is dollars, and that there is not included in such amount any debt contracted or incurred in the purchase of nontaxable property or securities owned by him or held for his benefit, nor for or on account of any indirect liability as surety, guarantor, indorser, or otherwise, nor for the purpose of evading taxation.

A B.

Subscribed and sworn to before me, }
this day of 18.. }
C D,
Notary Public.

No. 36.

Oath to Roll, Where Originally Prepared by Assessors.

(Village Law, § 106.)

STATE OF NEW YORK, }
County of } ss.:

We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment-roll all the real estate situated in the village, according to our best information; and that, with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full value thereof; and also, that the said assessment-roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll over and above the amount of debts due from such persons, respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full value thereof, according to our best judgment and belief.

A B,
C D,
E F,

Assessors of the Village of.....

Sworn to before me, this }
day of, 18.. }
(Signature of Notary.)

No. 37.

Oath to Roll, Where Copied from Town-Roll.

(Village Law, § 106.)

STATE OF NEW YORK, }
County of } ss.:

We, the undersigned, do severally depose and swear that the foregoing assessment-roll was prepared by copying the same from the assessment-roll of the town of, and contains, to the best of our knowledge, a true statement of the property, persons and corporations liable to assessment and taxation within the village as the same appears upon such assessment-roll, except where the valuation thereof has been changed or a new or additional assessment has been made, and that in changing such valuation or in making such new or additional assessment, we have estimated the value of the real estate at the sums which a majority of the assessors had decided to be the full value thereof, according to our best knowledge and belief.

A B,
C D,
E F,

Assessors of the Village of.....

Sworn to before me, this }
day of, 18.. }

.....,

Notary Public.

No. 38.

Notice of Completion of Assessment-Roll.

(Village Law, § 108.)

Take notice: The assessment-roll for the village of for the year 18.., has been finally completed, and was filed in the office of the village clerk on the day of, 18.., where the same will remain open to public inspection for fifteen days after the date of this notice.

Dated

A B,
C D,
E F,

Assessors of the Village of.....

No. 39.

Collector's Warrant.

(Village Law, § 114.)

You are hereby commanded to receive and collect from the several persons named in the assessment-roll, hereunto annexed, the several sums

named in the last column thereof opposite their respective names, for the following purposes:

For the general fund..... \$.
 For the street fund.....
 For the maintenance of sewers.....
 For the payment of principal and interest on bonds accruing
 on the day of, 18., for the construction
 of a lighting system.....

Being for all purposes a total amount of..... \$.

On all taxes to within twenty days after giving notice of the reception of this tax-roll or warrant, as required by section 115 of the Village Law, you are hereby directed to receive and collect, in addition to the taxes raised in such assessment-roll, one cent on every dollar or sum less than a dollar of taxes as your fee for collecting the same. On all taxes remaining unpaid after the expiration of said twenty days, you are entitled to receive and collect, in addition to such taxes remaining unpaid, five cents on every dollar, as your fees for collecting the same.

You will proceed and collect such taxes in the manner provided by section 115 of the Village Law.

If any person named in such assessment-roll shall neglect or refuse to pay the taxes assessed therein to him, or the fees for collecting the same, you are hereby authorized to levy and collect such taxes by distress and sale of the goods and chattels of such person within such village, together with the costs and charges of such distress and sale, and for so doing, this shall be your sufficient warrant.

Given under our hands and the seal of the village of, on this day of, 18..

Attest,

A B,
 Chairman.
 C D,
 Clerk.

(Village seal.)

No. 40.

Notice of Collector.

(Village Law, § 115.)

Take notice: I, the undersigned, the collector of taxes in and for the village of, have received the tax-roll and warrant for the collection of taxes for the present year, and I will attend at, in said village, on (naming six days, not less than nine nor more than twenty days after publication and posting such notice), from o'clock in thenoon until o'clock in thenoon of each such day, for the purpose of receiving taxes assessed upon such roll.

Dated

A B,
 Collector.

No. 41.

Notice of Sale by Collector.

(Village Law, § 115.)

By virtue of a warrant delivered to me, as collector of the village of, I have levied upon and taken possession of the following goods and chattels of C D, (or in his possession), and I shall sell the same at public auction at in the village of on the day of next, at o'clock in thenoon on that day.

Dated

A B,
Collector.

No. 42.

Affidavit that Notice of Sale has been Given.

(Village Law, § 115.)

STATE OF NEW YORK, }
County of } ss.:

R S, of the village of, in said county, being duly sworn, deposes and says, that on the day of, 18.., he posted in the village of, a notice of the sale of the goods and chattels of C D, at the three following places (insert places), and that the said notice continued so posted until the day of, 18.., the day appointed therein for the sale of such goods and chattels.

R S.

Subscribed and sworn to before me, }
this day of 18.. }

.....,
Notary Public.

No. 43.

Collector's Return.

(Village Law, § 116.)

STATE OF NEW YORK, }
County of } ss.:

A B, being duly sworn, deposes and says, that he is the collector of taxes for the village of; that the annexed is a true account of the taxes remaining unpaid upon the assessment-roll of such village for the year 18..; that the sums mentioned therein remain unpaid, and that he has not, upon diligent inquiry, been able to discover any personal property out of which the same might be collected by levy and sale. (If such tax is uncollected upon lands assessed to nonresidents also state reason why same are not collected.)

A B,
Collector.

Subscribed and sworn to before me, }
this day of 18.. }

.....,
Notary Public.

No. 44.

Form of Coupon Bond.

(Village Law, § 129.)

\$1,000.

UNITED STATES OF AMERICA.

No. 1.

STATE OF NEW YORK, }
 County of } ss.:

VILLAGE OF, WATER WORKS BONDS.

The village of promises to pay to bearer the sum of one thousand dollars on the 1st day of September, 1902, with interest thereon at the rate of (not to exceed five) per centum per annum until paid, payable annually on the first day of September in each year, on presentation and surrender of the interest coupons hereto attached, both interest and principal payable in legal tender money of the United States of America, at the bank of

This bond is issued by the trustees of the village of, under and in pursuance of title four of chapter four hundred and fourteen of the laws of eighteen hundred and ninety-seven, being an act entitled "An act in relation to villages, constituting chapter twenty-one of the general laws," and the proceedings had by such village and its trustees for the purpose of constructing a system of water works for such village.

All prerequisites to the issuance of this bond have been duly observed.

The credit of the village of is pledged for the payment of this bond, principal and interest.

In witness whereof, the president, treasurer and trustees of the village of have caused its corporate seal to be hereto affixed, and this bond to be signed by the president, and attested by the treasurer of the village of

Dated

(Seal)

Attest,

A B,
 President.
 C D,
 Treasurer.

FORM OF COUPON.

\$40.

The village of in the county of, New York, will pay to the bearer, at the bank of, New York, forty dollars, on the 1st day of September, 1898, being the yearly interest on water works bond No. 1.

A B,
 President.
 C D,
 Treasurer.

(Noncoupon bond is substantially the same in form, except the village promises to pay to a specified person, or his assigns.)

No. 45.

Offer to Dedicate a Street, or Land for a Street.

(Village Law, § 144.)

To the Board of Trustees of the Village of

In pursuance of section 144 of the Village Law, I hereby offer to dedicate to the village of the street hereinafter described, laid out on land owned by me in such village. Such street is bounded and described as follows: (Insert description), (or, land for the purpose of a public street therein, bounded and described as follows):

Dated

A B,

No. 46.

Petition for Laying out Street.

(Village Law, § 145.)

To the Board of Trustees of the Village of.....:

We, the undersigned, five resident freeholders of such village, hereby petition in pursuance of section 145 of the Village Law, for the laying out of a street therein, as hereinafter described.

The names and residences of the petitioners are as follows:

.....
.....
.....

Such street begins at (insert general course thereof), and the following lands are necessary to be taken therefor; a tract of land owned by A B, residing at, bounded and described as follows: (Insert the description of each parcel necessary to be taken, with the name and residence of the owner.)

Dated

A B,

C D,

E F.

etc.

No. 47.

Notice of Meeting of Board to Consider Petition.

(Village Law, § 146.)

Notice is hereby given that a petition, duly signed by five resident freeholders, has been presented to the board of trustees of the village of, for the laying out of a street therein from (insert general course proposed); and that the board of trustees will meet at, on the day of, 18.., at o'clock in thenoon, to consider such petition and any objections thereto.

Dated

A B,

Clerk.

No. 48.

Order of Board Granting Petition.

(Village Law, § 147.)

At a meeting of the board of trustees of the village of, held on the day of, 18..;

Whereas, A petition was presented to the board of trustees of such village for the laying out of a street therein on the day of, 18.., and a hearing was duly had before such board on the day of, 18.., for the purpose of considering such petition and any objections thereto;

Ordered; That such petition be granted; that such street be laid out in accordance with the description contained therein, and that the following described parcels of land be acquired therefor, in the manner provided by the Village Law: (Describe parcels.)

A B,
President.
C D,
Clerk.

Adopted.

Ayes.....

Noes.....

No. 49.

Application for Commissioners.

(Village Law, § 149.)

COUNTY COURT,

..... County.

IN THE MATTER OF THE LAYING OUT
OF A STREET IN THE VILLAGE OF

.....

Your petitioner, the board of trustees of the village of respectfully shows to this court, that on the day of, 18.., a petition was duly presented to the board of trustees of such village for the laying out of a street therein; that a meeting was duly held on the day of, 18.., by the board of trustees to consider such petition and any objections thereto; that thereafter it was duly determined by the trustees that such petition should be granted and that a street should be laid out in such village in accordance with the description thereof contained in such petition; that your petitioner has been unable to agree with R C for the purchase of a parcel of land owned by him and which is necessary for the purpose of laying out such street.

Wherefore, Your petitioner prays, in pursuance of section 149 of the Village Law, for the appointment of three commissioners to determine the compensation to which such owner is entitled by reason of the laying out of such street.

Dated this day of, 18..

A B,
President.

STATE OF NEW YORK, }
County of } ss.:

A B, being duly sworn, says that he is president of the village of and chairman of the board of trustees thereof; that he has read the foregoing petition by him subscribed, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

A B.

Subscribed and sworn to before me, }
this day of 18.. }

.....
Notary Public.

No. 50.

Notice of Application.
(Village Law, § 149.)

To R S:

Notice is hereby given that on the day of, 18.., the annexed petition will be presented to the county court of the county of, at o'clock in thenoon.

Dated

A B,
President.

(Annex copy of petition).

No. 51.

Order Appointing Commissioners.
(Village Law, § 150.)

At a term of the county court of the county of, held at in the in and for said county.

Present: Hon. M N (judge or justice).

IN THE MATTER OF THE LAYING OUT
OF A STREET IN THE VILLAGE OF

.....

On reading and filing the petition of the board of trustees of the village of, in said county, dated the day of, 18.., praying for the appointment of three commissioners to be appointed, pursuant to section 150 of the Village Law, to assess the damages of (insert name of each owner whose damages are to be assessed) by reason of the laying out of a street therein, it is hereby

Ordered, That (insert names of three resident disinterested freeholders of the county, nonresidents of the village, nor nominated by persons interested in the proceeding), be and they are hereby appointed such commissioners.

A B,
County Judge.

No. 52.
Notice of Meeting of Commissioners.
(Village Law, § 151.)

IN THE MATTER OF THE LAYING OUT
OF A STREET IN THE VILLAGE OF

Notice is hereby given that the undersigned, commissioners appointed herein to assess damages, will meet at, on the day of, 18.., at o'clock in thenoon, for the purpose of examining the land for which compensation is to be determined by them, and taking testimony in relation thereto, at which hearing all persons interested are notified to appear.

Dated

A B,
C D,
E F,
Commissioners.

To the Board of Trustees of the Village of..... and R S. H W, etc.

No. 53.
Notice of Agreement.
(Village Law, § 152.)

IN THE MATTER OF THE LAYING OUT
OF A STREET IN THE VILLAGE OF

To A B, C D and E F, Commissioners of Award:

Notice is hereby given that the board of trustees of the village of, have agreed with R S upon the compensation to which he is entitled by reason of the laying out of such street, and you are hereby directed to discontinue all proceedings as to him.

Dated

Board of Trustees, by
N S,
President.
C R,
Clerk.
R S.

No. 54.

Award of Commissioners.

(Village Law, § 152.)

IN THE MATTER OF THE LAYING OUT
OF A STREET IN THE VILLAGE OF

The undersigned, A B, C D and E F, having been duly appointed commissioners to assess damages herein, in pursuance of section 150 of the Village Law, by an order of the county court of the county of dated, 18.., whereby they were directed to assess and determine the compensation to which R S, H W, etc., were entitled by reason of the laying out of such street, and a hearing being duly had by them on the day of, 18.., and after examining the land for which compensation is to be determined, and taking testimony in relation thereto, and after making allowance for any benefit each owner may derive from the laying out of such street, they have determined such compensation and awarded to such owners the amount set opposite their names, respectively, as follows:

Names.	Amount.
R S.....	\$400 00
Dated	

A B,
C D,
E F,
Commissioners.

(Attach to award, the order of appointment, the minutes of proceedings, the evidence taken by them, and any notice of agreement served on them, and file same in office of village clerk.)

No. 55.

Notice of Appeal.

(Village Law, § 153.)

IN THE MATTER OF THE LAYING OUT
OF A STREET IN THE VILLAGE OF

Take notice: The undersigned, R S (or, the board of trustees of the village of), appeals from the award of the commissioners herein to the county court of the county of, for the following reasons: (State reasons briefly.)

Dated

R S.

To the Board of Trustees of the Village of

No. 56.

Notice to Bring on Appeal for Hearing.

(Village Law, § 155.)

IN THE MATTER OF THE LAYING OUT
OF A STREET IN THE VILLAGE OF

.....
 Sir.—Take notice, that the appeal from the award of the commissioners herein will be brought on for argument before the county court of the county of, on the day of, 18.., at o'clock in the forenoon, or as soon thereafter as counsel can be heard.

Dated

R S.

To the Board of Trustees of the Village of

No. 57.

Affidavit of Posting Notice.

(Village Law, § 331.)

STATE OF NEW YORK, }
 County of } ss.:

A B, being duly sworn, says that on the day of, 18.., he posted the annexed notice (or ordinance) in conspicuous public places in the village of, to-wit: (State places.)

A B.

Subscribed and sworn to before me, }
 this day of 18.. }

.....,

Notary Public.

No. 58.

Certificate of Change of Name.

(Village Law, § 347.)

We hereby certify that at the annual election held in the village of, on the day of, 18.., the following proposition was submitted to the electors thereof: Shall the name of the village of, be changed to the village of; and that such proposition was duly adopted thereat.

Dated

A B,
 President.
 O D,
 Clerk.

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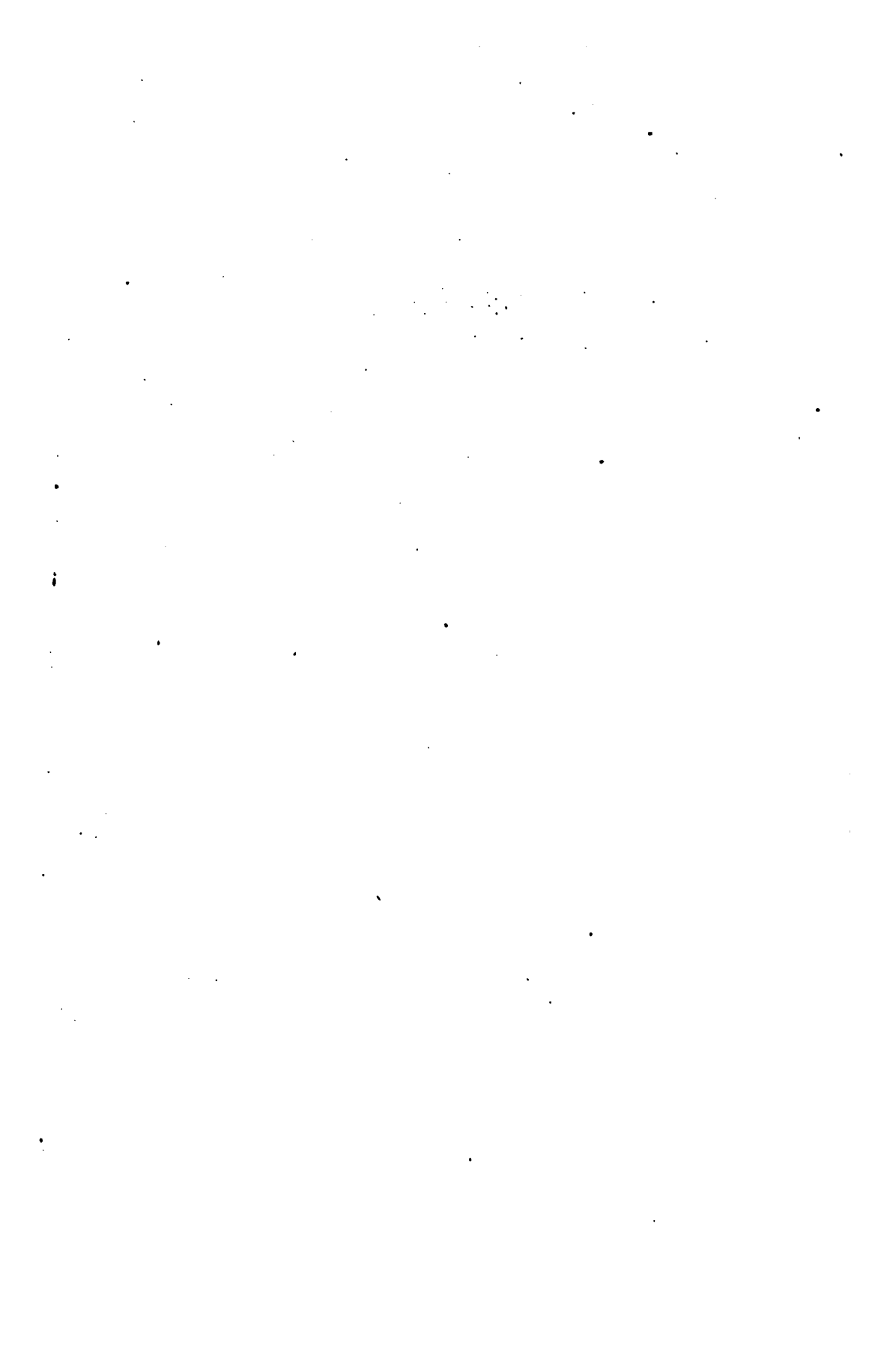
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